

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE:
NATIONAL PRESCRIPTION
OPIATE LITIGATION

CASE TRACK THREE

Case No. 1:17-md-2804
Cleveland, Ohio

October 13, 2021
8:47 a.m.

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VOLUME 7

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS,
BEFORE THE HONORABLE DAN A. POLSTER,
UNITED STATES DISTRICT JUDGE,
AND A JURY.

- - - - -

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21 - - - - -
22
23
24

1 WEDNESDAY, OCTOBER 13, 2021, 8:47 A.M.

2 THE COURT: All right. Please be seated.

3 All right. I guess the first thing to
4 address is the chart where we broke yesterday with
08:47:45 5 Mr. Rannazzisi.

6 I've read the plaintiffs' submission.
7 Defendants want to say anything about it?

8 MR. MAJORAS: Good morning, Your Honor.
9 John Majoras.

08:48:05 10 Your Honor, we raised a number of
11 objections yesterday, and we stand on those objections.

12 These are -- this PowerPoint slide is well
13 over 200 pages, contains --

14 THE COURT: First of all, we're not using
08:48:17 15 200 pages.

16 I think, I assume Mr. Lanier showed you
17 what pages he plans to use.

18 MR. MAJORAS: Mr. Lanier did talk to me
19 about that this morning.

08:48:26 20 There were a number of pages that we still
21 have some significant concerns about, one of which we
22 identified as certainly opinion testimony if it would
23 relate to addiction and the cycles of addiction.

24 I don't know whether Mr. Lanier agreed he
08:48:40 25 would withdraw that.

1 THE COURT: Well, this is a -- the
2 testimony is going to be that this is a presentation that
3 Mr. Rannazzisi made in 2015 that's part of his official
4 duties, and there were a number of representatives of
08:48:56 5 some of these defendants present.

6 So it's, in my view, it's relevant to
7 notice and what he did as DEA, a DEA official, in
8 advising the world, and particularly the pharmaceutical
9 industry, of what their obligations were.

08:49:16 10 And that he did it in 2015, and he's not
11 just coming up with it today.

12 So whether it's -- whether what he said was
13 accurate or not, I mean, you can cross-examine him on it.
14 All right? It may have been accurate. It may not have
08:49:32 15 been accurate, but he did it as an official of DEA, so it
16 comes in.

17 I'm not going to let him opine in any way
18 as to causal connection of anything that the pharmacists
19 did or didn't do.

08:49:50 20 If he's asked that, it's -- I'm going to
21 block it immediately.

22 MR. LANIER: And I will not ask that, Your
23 Honor.

24 I understand your injunction and, frankly,
08:49:59 25 I agree with you upon reflection.

1 MR. MAJORAS: Your Honor, the fact that
2 Mr. Rannazzisi gave this presentation previously, the
3 presentation itself is classic hearsay.

4 The fact he gave it, we're not denying he
08:50:11 5 gave presentations. We've already -- we've already
6 allowed testimony like that without objection, the whole
7 mouthpiece part that we heard.

8 The issue here is this document itself is
9 hearsay, and it relies on hearsay within hearsay when it
08:50:26 10 cites statistics and information.

11 Let me give an example. The one example
12 that plaintiffs showed to me this morning is this map of
13 Florida and where pill-mills migrated from Florida.

14 We haven't heard any, any basis that
08:50:38 15 Mr. Rannazzisi has that he did an investigation,
16 understands what the investigation is, what that leads
17 to, and now I've got a slide which is a conclusory slide
18 that you would typically see from an expert.

19 THE COURT: Well --

08:50:49 20 MR. MAJORAS: In addition to that, Your
21 Honor --

22 THE COURT: He'll have to lay a -- I mean,
23 if he's going to testify about that slide and the
24 statistics in it, Mr. Lanier is going to have to lay a
08:51:00 25 foundation. And if Mr. Rannazzisi did that work or it

1 was done under his direction as a DEA official, he can
2 testify about it.

3 MR. MAJORAS: The other concern I have,
4 Your Honor, which I alluded to yesterday, didn't get a
08:51:14 5 chance to make on the record, is we fully anticipate that
6 this is going to be another exercise of leading a witness
7 through a set of PowerPoint slides.

8 THE COURT: I'm not going to -- I mean --

9 MR. MAJORAS: We agree with your statement
08:51:25 10 you made that it's helpful certainly from an expert, but
11 again, we're distinguishing an expert from this is
12 supposedly a fact witness.

13 MR. LANIER: Your Honor, I don't intend to
14 lead.

08:51:34 15 I intend to put the slide -- ask him if he
16 gave the presentation, if some of the defendants were
17 present; here's a couple of slides that have been pulled
18 out, did he present this slide; was it prepared by him
19 and his staff, what did he mean.

08:51:46 20 Did he present this slide? What did he
21 mean? I mean, those are not leading questions.

22 MR. MAJORAS: The slides have the effect of
23 writing out his testimony, Your Honor, exactly concerned
24 with what Mr. Lanier said was a fact witness.

08:51:59 25 THE COURT: All right. Well, let's do it

1 this way.

2 You can ask him if he made the
3 presentation, what work did he do to generate the
4 information he gave, and you can ask him what he said,
08:52:11 5 and if Mr. Lanier wants to say, "All right, did you
6 present it in written form to these people, and is this
7 it"; "Yeah," and he can identify it, "This is the
8 information I presented to the pharmacists on X date in
9 2015."

08:52:28 10 MR. MAJORAS: Your Honor, one last point
11 before I sit down, and that goes to the notice point.

12 The testimony we heard yesterday was there
13 may have been a handful of people at this presentation in
14 Virginia or something to that effect, I'm not trying to
08:52:39 15 quote it exactly.

16 We don't believe that is sufficient to base
17 a notice claim on in terms of these defendants and what
18 Mr. Rannazzisi is --

19 THE COURT: We'll find out specifically who
08:52:51 20 was invited, who was there, if it was disseminated to
21 people afterward.

22 I want to hear that to make sure
23 there -- that essentially that this was given to -- this
24 was presented to pharmacies, some of these defendants.

08:53:09 25 All right? If there's no evidence that any

1 of these defendants were there, Mr. Lanier, I'm not sure
2 it is so relevant.

3 MR. LANIER: I'll not only make that
4 record, Your Honor, I'll also represent to the Court it's
08:53:23 5 still listed on the DEA website and downloadable.

6 I also would like the record to reflect
7 that --

8 THE COURT: Well, there's a lot of stuff on
9 the DEA website, but I'm not going to just, you know, to
08:53:32 10 say, "Well, it's on the website, so defendants had to see
11 it," I mean, they might have seen it.

12 MR. LANIER: Fair enough.

13 I would also like the record to reflect I
14 tried really hard and, I think, effectively pulled out a
08:53:47 15 lot of the hearsay within hearsay. There were comments
16 that I think I should be able to use, but I'm not trying
17 to. I'm not suggesting it. Some of the newspaper
18 articles, some of the things that based on your rulings
19 thus far, I don't think would come in, and I think you'd
08:54:02 20 be very frustrated if I did it.

21 And so I've pulled out all of those. I've
22 given Special Master Cohen and the other side the
23 selected slides that I would show, and I'll keep it to
24 that, Your Honor.

08:54:14 25 THE COURT: Well, first, we've got to

1 confirm that there were representatives of at least one
2 of the four defendants present.

3 MR. LANIER: Understood. Understood.

4 MR. STOFFELMAYR: Can we have the slides?

08:54:25 5 We haven't seen those.

6 MR. LANIER: Yes.

7 MR. MAJORAS: I understand the Court's
8 ruling.

9 I'll just note for the record that these
08:54:31 10 objections are to the PowerPoint presentation as a whole
11 on behalf of all defendants.

12 We'll, of course, raise individual
13 objections as we see fit.

14 THE COURT: All right. Well, the whole
08:54:40 15 PowerPoint isn't going to come in, Mr. Majoras.

16 MR. MAJORAS: I understand, sir.

17 THE COURT: All right. We're doing it with
18 selected portions and maybe selected slides, but I'm not
19 going to -- there's a lot in that document I wouldn't let
08:54:51 20 in for some of the reasons you've articulated.

21 MR. LANIER: Understood.

22 THE COURT: Okay.

23 MR. MAJORAS: Thank you, Judge.

24 THE COURT: All right. Mr. Delinsky, there
08:55:02 25 was something you said you wanted to raise.

1 MR. DELINSKY: Thank you, Your Honor.

2 The issue I want to raise pertains to

3 testimony Mr. Rannazzisi may or may not give, but I

4 suspect Mr. Lanier will attempt to adduce this

08:55:23 5 information, regarding the details of what happened in

6 his investigation of and the findings of the two

7 particular CVS Pharmacies in Sanford, Florida that were

8 the subject of the *Holiday* opinion and the settlement.

9 And by details, I mean the -- what

08:55:44 10 pharmacists said in interviews, what the data showed on

11 those two particular pharmacists, and that's what I want

12 to address, Your Honor.

13 THE COURT: Well, first, let me find out,

14 Mr. Lanier, are you going to try to elicit this? If

08:55:59 15 so --

16 MR. LANIER: I'm unclear on exactly what

17 Mr. Delinsky's referencing because there are two sets,

18 two buckets.

19 One bucket is the *Holiday* indictment,

08:56:10 20 complaint, and all of that mess which has information

21 that, frankly, Mr. Rannazzisi is not responsible for,

22 even though he oversaw it.

23 The second -- and I don't plan on getting

24 into those details in that bucket.

08:56:21 25 The second bucket is a declaration that

1 Joseph Rannazzisi made and signed, and that declaration
2 that he signed as the Deputy Assistant Administrator for
3 the Office of Diversion is based upon his job and what he
4 did, and in that declaration he explains what all was
08:56:41 5 done from the DEA perspective under his purview and what
6 his findings were.

7 It's a declaration that he signed saying,
8 "I declare under penalty of perjury that the foregoing is
9 true and correct," executed February 24th, 2012.

08:56:57 10 And that's the declaration that I do intend
11 to ask him about.

12 THE COURT: Well, what -- I haven't seen
13 the declaration.

14 How -- what -- what is the purpose of going
08:57:09 15 into this?

16 MR. LANIER: Your Honor, the declaration
17 itself shows the work that was done, the concerns the DEA
18 had, the illegal conduct of the defendants under the
19 auspices at least or oversight perception of the DEA.

08:57:27 20 And that's one of the things I've got to
21 prove under the charge. I've got to prove either illegal
22 or intentional misconduct, and the way I get there is by
23 showing in Florida, in part, with a migration issue that
24 we've got that comes to Ohio, that these defendants, CVS,
08:57:49 25 engaged in what I hope the jury will determine is illegal

1 activity.

2 But I've got to put on some evidence of
3 that, even from the DEA's perspective, though it's not a
4 binding perspective on the Court or the jury.

08:58:02 5 MR. DELINSKY: And so, Your Honor, we
6 have --

7 THE COURT: Well, the *Holiday* or *Holiday*
8 decision, the Court made that finding.

9 I mean the ALJ made that finding, correct?
08:58:13 10 And it's in evidence, right?

11 MR. LANIER: I don't think it's in evidence
12 yet.

13 THE COURT: As far as I'm concerned, it is
14 in evidence.

08:58:21 15 MR. LANIER: Okay.

16 THE COURT: There's been ample testimony
17 about it and I, you know, so the decision, the decision,
18 the DEA decision and the finding against CVS is in
19 evidence and there's been a lot of testimony about it.

08:58:35 20 So --

21 MR. LANIER: What Mr. Rannazzisi offers is
22 the facts behind the decision; not simply the holding of
23 the decision.

24 And it's those facts that I think are
08:58:46 25 relevant to a jury.

1 MR. DELINSKY: And, Your Honor, that's
2 where our objection comes in, and it's a twofold
3 objection.

4 THE COURT: Doesn't the Court make those
08:58:55 5 findings -- it's not the Court -- the ALJ, which the DEA
6 Administrator adopted in the order? It's a published
7 decision, made findings that CVS violated the CVS -- I
8 mean the Controlled Substances Act, the CSA.

9 MR. LANIER: Does make those findings, but
08:59:15 10 doesn't give a lot of the detail and --

11 THE COURT: Well, I don't think --

12 MR. LANIER: -- of the facts.

13 THE COURT: Well, the finding of illegality
14 is all you need.

08:59:25 15 That's a judicial finding of illegality,
16 that illegal conduct by CVS in Florida.

17 MR. LANIER: Okay.

18 THE COURT: Right? I mean --

19 MR. LANIER: Yes, Your Honor, but I think
08:59:34 20 it's helpful if I've got the underlying facts that belie
21 the case that's being made by the defendants that they
22 did nothing wrong.

23 THE COURT: Is the defendant, CVS,
24 disputing -- I mean, you know, disputing the finding? I
08:59:49 25 mean, if you are then I'll let him testify about it, if

1 you're disputing that the ALJ made those findings and it
2 was adopted by the Administrator that CVS violated the
3 CSA in Florida.

4 MR. DELINSKY: Your Honor, CVS in the
09:00:03 5 settlement, there's been testimony on this as well, has
6 admitted that the pharmacists did not fully comply with
7 their corresponding responsibility, and that has been the
8 subject of evidence, too.

9 We don't dispute that admission.

09:00:18 10 I think the real issue here, and I think
11 we're in agreement, Mr. Lanier and I are in agreement on
12 what the issue is, is do the bottom line facts come in
13 through Mr. Rannazzisi.

14 And we have two objections to that, Your
09:00:36 15 Honor, and they're important, and let me lead with the
16 more global one first.

17 The purported use of this is for notice.
18 It's a similar theory as for --

19 THE COURT: No. This is not notice.

09:00:53 20 That --

21 MR. DELINSKY: Well, if it --

22 THE COURT: This is coming in as direct
23 evidence; not hearsay. This is -- Mr. Lanier is offering
24 this as direct evidence of CVS's intent.

09:01:08 25 MR. DELINSKY: Well, but there's -- oh,

1 boy, Your Honor, there's no evidence of CVS intent in
2 this opinion.

3 There's evidence --

4 THE COURT: Well, I don't have the opinion.

09:01:18 5 MR. DELINSKY: Yeah. There's evidence that
6 CVS --

7 THE COURT: Can someone give me the
8 opinion? It speaks for itself.

9 MR. DELINSKY: Mr. Rannazzisi expressly
09:01:25 10 determines in his declaration that this was the conduct
11 of certain pharmacists who did not follow CVS policy.

12 THE COURT: Well, then, if that's what he
13 says, then that's what he says.

14 MR. DELINSKY: But, Your Honor, there are
09:01:39 15 402 issues here and 403 issues.

16 This case is not about two pharmacies in
17 Florida; it's about the pharmacies here.

18 Your Honor, over intense objection from
19 CVS, has permitted the introduction of many settlements
09:01:57 20 and a lot of testimony --

21 THE COURT: I want to see, where is the
22 finding? This is a long opinion. I don't have time for
23 this now.

24 Where is the finding that the Judge makes?

09:02:05 25 MR. LANIER: Your Honor, look at the flags

1 up at the top.

2 Those have the finding pages. I've flagged
3 them for my reference, at least, and I'll let the other
4 side know I don't have anything other than the flags at
09:02:16 5 the top that I gave the Court.

6 But those take you to a couple of pages.

7 MR. DELINSKY: I mean, Your Honor, we
8 would -- we do not dispute that the DEA determined that
9 corresponding responsibility wasn't followed and revoked
09:02:34 10 the licenses of --

11 THE COURT: "Statement of respondent's
12 employees thus manifest a complete abdication of their
13 responsibility to exercise professional judgment before
14 dispensing prescriptions for highly-abused controlled
09:02:47 15 substances."

16 All right? That's intentional conduct.
17 They abdicated, CVS pharmacists abdicated their
18 responsibilities. So that's here, it's published, that's
19 a finding.

09:03:08 20 MR. DELINSKY: Your Honor, we object to any
21 of this coming in under 402 and 403 in that it's Florida,
22 but --

23 THE COURT: Well, that's overruled, but
24 it's very relevant.

09:03:18 25 All right.

1 MR. DELINSKY: If the testimony is limited
2 to that line that you said, that resolves another layer
3 of our objections; not our global objection to why we're
4 talking about Florida in a case about 14 pharmacies in
09:03:31 5 two counties in Ohio.

6 THE COURT: Because, Mr. Delinsky, all the
7 evidence has been clear, all these defendants had
8 national policies, okay? They had national policies as
9 to what pharmacists were to do and not to do.

09:03:42 10 And so something that happens in Florida in
11 the time period is directly relevant. So I've overruled
12 that and I'll continue to overrule objections.

13 MR. DELINSKY: All right.

14 Your Honor, the one other thing I would add
09:03:55 15 is, look, in candor, Your Honor, you know, we think the
16 admission of this evidence, coupled with the admission of
17 what, I think four or five other CVS settlements, is in
18 the land of very significant error, but each time we get
19 another witness being questioned about these facts, that
09:04:14 20 potential error and the prejudice that results from it is
21 magnified.

22 There already has been testimony in this
23 case about it. Over our objection, Your Honor has
24 determined that it's relevant, but to the extent that
09:04:29 25 it's relevant it's not Ohio relevant. And there has to

1 be an end game here. If it comes piling on on
2 pharmacies, two pharmacies that are not -- that are
3 hundreds of miles away from where the case is, so there
4 has to be some limiting factors on how often this can be
09:04:46 5 raised in this trial.

6 These are aggressive --

7 THE COURT: The reason I'm concerned is
8 that we already have a judicial finding, all right, a
9 contested judicial finding.

09:04:56 10 That's in evidence and you can admit that,
11 okay, on the issue of intent as well as notice.

12 I don't think it's appropriate to have, you
13 know, essentially the prosecutor, who was Mr. Rannazzisi,
14 or the prosecutor's agent, putting in his opinion as to
09:05:16 15 why, why CVS's conduct was particularly bad or going into
16 a lot of details that go beyond the published opinion.
17 All right?

18 I think the published opinion speaks for
19 itself. It's not hearsay. It's a judicial record. It's
09:05:32 20 a finding, a contested finding, and whatever that Judge
21 determined, that's that.

22 All right?

23 MR. LANIER: Okay.

24 THE COURT: Both for notice and as evidence
09:05:42 25 of conduct, but I'm -- you know, to have Mr. Rannazzisi

1 say why it was particularly important for DEA to pursue
2 this or what he saw in the evidence, I --

3 MR. LANIER: Your Honor.

09:06:02

4 THE COURT: -- I'm not inclined to admit
5 that.

6 MR. LANIER: All right. Your Honor,
7 perhaps if I approach it this way.

8 I've already had Mr. Rannazzisi explain the
9 process of how these things come about in a global sense.

09:06:13

10 THE COURT: Right. Right.

11 MR. LANIER: So I could walk back through
12 that and say "The jury has heard about the *Holiday* case,
13 it's been admitted into evidence."

09:06:24

14 "Were you involved in that? Did you give a
15 declaration? Did you do the necessary investigation?
16 Did you follow the steps?"

17 And I'll just do that without going into
18 great detail of what the declaration says.

19 THE COURT: That's fine.

09:06:36

20 MR. LANIER: And I'll just leave it as a
21 bill or something like that.

22 THE COURT: All right. I think that's
23 satisfactory.

24 MR. STOFFELMAYR: Judge.

09:06:50

25 MR. LANIER: Do you mind?

1 Your Honor, the only other concern I've got
2 is our records show that the *Holiday* case was not
3 admitted, that all you did was allow testimony on certain
4 sections that I read, and then had me move on from it at
09:07:04 5 that point.

6 So if we're going to admit it, that makes a
7 world of difference to me.

8 MR. DELINSKY: Well, Your Honor, there's a
9 lot of information that's -- that underlies factual
09:07:14 10 findings that underlies the conclusion Your Honor quoted.

11 I think that we should attempt to either
12 come up by way of stipulation --

13 THE COURT: See what you can do.

14 If you think that there's something -- but
09:07:25 15 I'm going to admit the decision, all right, at least key
16 parts of it.

17 MR. DELINSKY: Okay.

18 THE COURT: So there's a lot of footnotes
19 and a lot of other stuff.

09:07:33 20 Maybe you can, you know, work out a
21 stipulation, fine; but it's coming in.

22 MR. LANIER: Thank you, Judge.

23 MR. STOFFELMAYR: Judge, real quickly, and
24 we can -- I want to flag this, we can address it in
09:07:44 25 real-time if it comes up.

1 We have a related concern about allegations
2 made in orders to show cause. Those are charging
3 documents, not a decision by anybody.

4 THE COURT: Right.

09:07:55 5 MR. STOFFELMAYR: There are, Your Honor,
6 allegations, you can call them salacious, inflammatory.
7 There's a settlement agreement. Mr. Lanier has already
8 read the admissions of the settlement agreement. We
9 understand the jury gets to hear what we admitted to.
09:08:08 10 You know, that's not for today, obviously.

11 But it is, obviously, important to us that
12 Mr. Rannazzisi isn't able to testify to the jury about
13 these very inflammatory allegations about very local
14 events and specific pharmacies in Florida.

09:08:23 15 They were never adjudicated by an ALJ or
16 anybody else.

17 THE COURT: Well, I don't -- all right,
18 Mr. Lanier, I don't know what Mr. Stoffelmayr is
19 referring to, if you're planning to go into this. I
09:08:38 20 again don't think it's appropriate for Mr. Rannazzisi to
21 just talk about allegations that he -- the DEA made in
22 the case.

23 MR. LANIER: I understand, Your Honor.

24 And I don't think that's what we have here.

09:08:51 25 THE COURT: All right.

1 MR. LANIER: What we have here is a
2 settlement and memorandum of agreement that the Court has
3 already said I'm allowed to get into.

4 THE COURT: Right.

09:08:59 5 MR. LANIER: It is the Walgreens settlement
6 and memorandum of agreement. It's got a procedural
7 background in the agreement. It's got certain language
8 within the agreement.

9 And this is an agreement that Joe Ran --
09:09:12 10 Joe Rannazzisi testified in the case, he signed the order
11 to show cause. Actually he signed --

12 THE COURT: We don't have to go through
13 this, but the point is I don't think it's appropriate for
14 Mr. Rannazzisi to just list a whole lot of allegations
09:09:27 15 that were made, all right?

16 That's -- I think that's more prejudicial
17 than probative. Findings, settlement, that's, you know,
18 that's -- that testimony can be allowed.

19 MR. LANIER: Understood, Your Honor.

09:09:41 20 MR. STOFFELMAYR: Thank you, Judge.

21 MS. FUMERTON: Your Honor, for Walmart,
22 there's also four potential settlements that might be at
23 issue.

24 I'm not sure if Mr. Lanier is intending to
09:09:50 25 go into this with Mr. Rannazzisi or not. If he's not, we

1 don't need to discuss this now.

2 I think there's one memorandum of
3 agreement.

4 THE COURT: Well, there's one -- there are
09:09:58 5 four Walmart settlements that I looked at in connection
6 with, I think, Nelson. All right?

7 Two were in -- one of them, one of them, an
8 earlier one, 2011 or '12, I don't think covers the
9 conduct we're talking about in this case and I don't
09:10:16 10 think it's relevant. It had to do with theft, and we're
11 not talking about theft.

12 So but the other three, the other three
13 relate to diversion. I think the first one was 2011.
14 There were two in 2015. If Mr. Rannazzisi had something
09:10:36 15 to do with it, he can, you know, he can talk about what
16 he did and that there was a settlement, but again, I'm
17 not going to allow him to testify to what DEA's
18 allegations were.

19 MR. LANIER: Your Honor, I believe
09:10:54 20 Mr. Rannazzisi only has knowledge of one of them, and
21 that's the one that I was going to use because that's the
22 only one he's got personal knowledge of.

23 THE COURT: Which one's that?

24 MR. LANIER: It is the one that was -- the
09:11:05 25 background was 2009. It was signed and entered, signed

1 by Mr. Rannazzisi on March 17th, 2011. It's the one that
2 says that Walmart improperly dispensed controlled
3 substances to individuals based on purported
4 prescriptions issued by physicians who were not licensed
09:11:23 5 to practice medicine in California.

6 Then two other dispensing issues.

7 So it's one of the ones that we believe is
8 proper.

9 THE COURT: All right. Ms. Fumerton, I
09:11:32 10 think he can -- I think that that testimony, that
11 settlement comes in the same way the others do.

12 MS. FUMERTON: Yes, Your Honor. We
13 actually don't have an objection based on the prior
14 rulings --

09:11:44 15 THE COURT: All right.

16 MS. FUMERTON: -- on that one.

17 So if that's the only one we're talking
18 about, that's fine with us.

19 MR. WEINBERGER: Your Honor, can I just add
09:11:51 20 one thing for the record as far as the settlement
21 agreements are concerned?

22 Specifically as to Walgreens, and you're
23 going to hear this afternoon a district manager from
24 Walgreens, there were, in response to, for example, the
09:12:05 25 2013 MOA that Walgreens entered into, there were a number

1 of policy changes, there were a number of audits, there
2 are a number of documents that talk directly about that
3 MOA and whether or not they complied or not complied.

4 That MOA contains an exhibit which is a
09:12:28 5 going-forward compliance document which Walmart -- which
6 Walgreens agreed to follow.

7 There's a lot of evidence about what they
8 did or didn't do, and how successful they were or were
9 not in complying with that agreement and that compliance
09:12:43 10 document.

11 MR. STOFFELMAYR: Judge, that wasn't what I
12 was talking about.

13 I was talking about --

14 THE COURT: That's different,
09:12:51 15 Mr. Stoffelmayr.

16 MR. WEINBERGER: Can I just -- so the
17 reason I'm saying this is that it gives you the context,
18 not only with respect to notice, but with respect to
19 going-forward conduct and whether or not they were in
09:13:04 20 compliance with what they agreed were the standards that
21 they had to follow.

22 THE COURT: That's -- that crystallizes why
23 these settlements are relevant.

24 Yeah, there's notice, but to me what is
09:13:20 25 particularly probative on, on whether or not the

1 plaintiff can prove its case, is what the defendants did
2 or didn't do after these settlements.

3 MR. LANIER: Agreed, Your Honor.

4 THE COURT: Did they change their conduct,
09:13:38 5 all right?

6 I mean, if they did, well, that is
7 relevant. If they didn't, that's also relevant. And I
8 will -- I will allow testimony on any witness who has
9 knowledge of that, okay, as to what any of the four
09:13:55 10 defendants did or didn't do.

11 It doesn't apply to Giant Eagle because
12 they don't have any of these settlements, so it's really
13 the other three, Walgreens, CVS, Walmart, what those
14 defendants did or didn't do after any of those
09:14:08 15 settlements in the area we're talking about, their SOMS.
16 All right?

17 MR. WEINBERGER: It's not just SOMS, it's
18 dispensing conduct, also, Your Honor.

19 THE COURT: All right. So what they did or
09:14:20 20 didn't do, and that, to me, that is far more important
21 than the fact that there were a few settlements.

22 MR. STOFFELMAYR: We agree completely, Your
23 Honor.

24 THE COURT: Particularly since we're
09:14:32 25 talking about a 10-year period, all right, 2007 -- or

1 12-year period, I guess.

2 All right. Anything else that we need
3 to -- yes, Mr. Delinsky.

4 MR. DELINSKY: Your Honor, very briefly,
09:14:46 5 and this is more by way of housekeeping related to this
6 issue. We do need a limiting instruction, we've talked
7 about this before on the settlements.

8 THE COURT: Have you provided -- have you
9 worked something out? If you've worked something out
09:15:02 10 I'll give it.

11 MR. DELINSKY: We've provided one to
12 plaintiffs. We're just awaiting comments. Pete had
13 identified an issue.

14 MR. LANIER: We will get it to you.

09:15:14 15 THE COURT: As soon as you come up with it,
16 Mr. Delinsky, I'll give it. I think, you know, if the
17 parties agree on the language, I'll give it.

18 MR. DELINSKY: What we did, Your Honor, is
19 we based it on the limiting instruction that Judge Sargus
09:15:26 20 gave in the *DuPont* ruling, which is one of the cases Your
21 Honor relied on. So it's largely modeled after that, but
22 we will endeavor to get that.

23 THE COURT: All right. Did someone give to
24 Mr. Pitts or to me the exhibits from the prior witness,
09:15:43 25 Mr. Catizone?

1 I mean, I don't want to forget and I don't
2 want to leave all this to the end of the case, so I
3 need -- I need to have that and what, if any, objections
4 there are, and I'll figure it out.

09:15:53 5 So if you haven't, I'd like to do that, to
6 stay current, because otherwise there would be no way to
7 go back, you know, weeks remembering what exhibits were
8 offered and what objections there are.

9 MS. FUMERTON: Your Honor, we exchanged
09:16:09 10 lists with plaintiffs last night.

11 I think there's some objections we logged.

12 I, if Your Honor is okay with it, I think
13 maybe we would benefit from one additional discussion.

14 THE COURT: That's fine. You can take
09:16:19 15 another day, Ms. Fumerton, but I don't -- my mind isn't
16 good enough to keep track of all this days and days in
17 arrears, all right?

18 MR. LANIER: I doubt that.

19 THE COURT: No, I'll testify to that under
09:16:34 20 oath.

21 So I've got to keep reasonably current on
22 these or else we'll just get all balled up, and I don't
23 want to do that, obviously.

24 MS. FUMERTON: Yes, Your Honor. I think we
09:16:44 25 can do that by the end of the day.

1 THE COURT: Okay. All right. Well, we
2 took 15 minutes, so I have to charge that to each side,
3 all right.

4 So we can bring the jury in and have our
09:16:53 5 witness back, I believe.

6 (Jury in.)

7 THE COURT: Good morning, ladies and
8 gentlemen. Please be seated.

9 I apologize for the delay. We had some
09:18:41 10 legal issues I needed to take up, so, Mr. Rannazzisi, I
11 want to remind you you're still under oath from
12 yesterday.

13 And, Mr. Lanier, you may continue.

14 MR. LANIER: Thank you very much, Your
09:18:53 15 Honor. May it please this Court, Mr. Rannazzisi, thank
16 you for being here. Ladies and gentlemen, good morning
17 to y'all, and we shall commence.

18 DIRECT EXAMINATION OF JOSEPH RANNAZZISI (RESUMED)

19 BY MR. LANIER:

09:19:06 20 Q. Mr. Rannazzisi, yesterday I've given you and the
21 jury and the Court a roadmap to kind of organize our
22 thoughts and keep us on track, and we'd gotten to the
23 third stop, your interactions with the defendants.

24 Do you remember that?

09:19:18 25 A. Yes, sir.

1 Q. And in that regard, we discussed PowerPoint
2 presentations that you made, different ones that you've
3 done to different groups.

4 Do you recall that, as well?

09:19:31 5 A. Yes, sir.

6 Q. And that's where I'd like to pick up now.

7 I'd like to draw your attention to
8 Plaintiffs' Exhibit 15692 and ask you a few questions
9 about it.

09:19:47 10 I'll put the initial slide up so you can
11 see it.

12 This was a PowerPoint presentation you
13 made?

14 A. Yes, sir.

09:19:56 15 Q. Was this prepared -- who prepared this PowerPoint
16 presentation?

17 A. I prepared the PowerPoint presentation, the slides
18 that were going to be used.

19 Some of the slides that are in here were
09:20:08 20 prepared by some staff members, but generally they were
21 prepared, I had an idea of what I wanted the slide to
22 look like, and they just created it; but for the most
23 part, if I didn't create the slide, the slides were
24 created at my direction for this presentation.

09:20:22 25 Q. Very good.

1 When did you make this presentation?

2 A. May 30th and 31st, 2015.

3 Q. And we see on the front that it was made to the

4 Virginia Pharmacy Division Awareness Conference, the

09:20:45 5 National Association of Boards of Pharmacy, the Virginia

6 Board of Pharmacy, and the DEA.

7 Can you tell us who was present when you

8 made this presentation?

9 A. Everybody who was in that list made some sort of

09:21:01 10 presentation.

11 There was also a law enforcement officer

12 present who did a presentation, as well.

13 So the Virginia Pharmacy Diversion

14 Awareness Conference is the title of the event. The

09:21:15 15 National Association of Boards of Pharmacy had a

16 representative. It was either Bill Winsley or one of the

17 NABP members.

18 The Virginia Board of Pharmacy Executive

19 Director was there and made a presentation.

09:21:27 20 And then I made the presentation for the

21 DEA. We might have had one chemical person make a

22 presentation, too.

23 Q. Do you remember whether or not this was attended by

24 any of the national chain pharmacies that are here in the

09:21:41 25 courtroom?

1 A. We all --

2 Q. I'm sorry, do you know the three that are in here?

3 A. Yes.

4 Q. Okay.

09:21:48 5 A. We generally had a representation from the chains.

6 I am almost -- I can think of not one where
7 one of the chains did not attend the conference.

8 Q. And when you say chains, are you meaning CVS,
9 Walgreens, Walmart?

09:22:07 10 A. Yes.

11 Q. Okay. So based upon your memory, would those
12 chains have -- at least one or two or three of those
13 chains been present at these presentations, at this
14 presentation?

09:22:18 15 A. At least one.

16 And to clarify, it would be a pharmacist
17 from the chain, because this is geared towards the
18 pharmacists. Now, we didn't, we didn't say "Only
19 pharmacists could attend."

09:22:29 20 We could have had the techs, we've had
21 people from their management, regional managers, district
22 managers, whatever you want to call them.

23 But for the most part, at least every
24 conference was attended by at least one, yes.

09:22:47 25 Q. Did you present -- and we're going through steps

1 before we look at the PowerPoint.

2 A. Yes.

3 Q. Did you present each one of these slides? And by
4 that I mean, did you display it for those in attendance
09:23:01 5 to see?

6 A. Yes.

7 Q. Did you speak about the content on each one of
8 these slides?

9 A. Yes.

09:23:07 10 Q. Do these slides represent not only what you showed
11 to those in attendance, but what you said to those in
12 attendance?

13 A. Yes.

14 Q. Okay. With that foundation, I wanted to look
09:23:22 15 through --

16 MR. MAJORAS: Objection.

17 No foundation, and relevance.

18 THE COURT: Let me --

19 (Proceedings at side-bar:)

09:23:44 20 THE COURT: All right. Foundation is a bit
21 thin.

22 I mean, we have his memory is that there
23 was --

24 MR. LANIER: At least one.

09:23:56 25 THE COURT: -- one pharmacist from at least

1 one of the three defendants who was there.

2 MR. MAJORAS: And no specificity whatsoever
3 on who that pharmacist is or where they were from, what
4 company.

09:24:13 5 MR. LANIER: Well, Your Honor, he
6 specifically -- I mean, he's making the presentations
7 here.

8 THE COURT: I know he's making the
9 presentation, but if -- I mean this presentation is not
09:24:25 10 different than what he's testified to already, so the
11 fact that he's, you know, he made a presentation about a
12 number of things he's testified to isn't -- isn't
13 relevant unless it was specifically made to these
14 defendants.

09:24:44 15 And I just -- his memory is so vague, and
16 there doesn't seem to be any written record of who was
17 there, that I'm not sure -- I'm really not sure of the
18 relevance.

19 MR. LANIER: Your Honor, the records
09:25:04 20 indicate that there were 410 pharmacists in attendance.

21 For him to have a memory --

22 THE COURT: All right. There were 410
23 pharmacists in attendance?

24 MR. LANIER: Yes, Your Honor.

09:25:13 25 THE COURT: I mean, he hasn't said that.

1 MR. LANIER: All right. I'll be glad to
2 ask that, and that's why he can't sit there under oath
3 and swear, "Oh, I know that there were three from CVS or
4 I know they were --"

09:25:25 5 THE COURT: Does it say what geographic
6 area? Were they all from Virginia?

7 MR. LANIER: I don't know. I'll have to
8 ask him that.

9 THE COURT: Well, let's see. I want to
09:25:32 10 know who, who from the industry was there.

11 MR. LANIER: Okay.

12 THE COURT: All right?

13 MS. FIEBIG: Your Honor, we can confirm
14 that Giant Eagle was not there and does not operate in
09:25:43 15 Virginia.

16 THE COURT: That doesn't mean they weren't
17 at the conference. He didn't talk about Giant Eagle.

18 MR. LANIER: Yeah, he does not know --

19 THE COURT: He didn't say Giant Eagle was
09:25:49 20 there at all.

21 MR. LANIER: Right.

22 THE COURT: In fact, I think he effectively
23 said they weren't there, so -- were the others.

24 MR. LANIER: All right. I'll ask that,
09:25:57 25 Your Honor.

1 Thank you.

2 (End of side-bar conference.)

3 BY MR. LANIER:

4 Q. Do you have any basis for knowing numbers that
09:26:15 5 would have attended this conference? Are we talking
6 handful, or what?

7 A. It depends.

8 We, for instance, in Florida, I think we
9 had over 1,700 pharmacists attend.

09:26:28 10 Sometimes it's a hundred or less. It just
11 depends.

12 We've had 400, 600, you know, 300. It just
13 depends on the location.

14 And it's a two-day conference, so each day
09:26:42 15 is a separate presentation, so it just depends on, like,
16 Sunday might be attended more than Saturday. It just
17 depends.

18 Q. All right. If we look at the DEA records and they
19 record 410 in attendance at this, would that be
09:27:01 20 consistent with your memory or would that refresh your
21 memory?

22 MR. MAJORAS: Objection.

23 Leading.

24 THE COURT: Yeah, I'll sustain that.

09:27:08 25 MR. LANIER: Okay.

1 THE COURT: If there are records, you can
2 show him the records.

3 BY MR. LANIER:

4 Q. Okay. While we effort to pull those, I want to
09:27:15 5 make sure that I ask you, who from -- if you are -- what
6 is your comfort level at saying that there were
7 pharmacists from the national chains that we have in this
8 courtroom, at least one, two or three of them, in
9 attendance at this Virginia seminar?

09:27:37 10 A. Oh, I'm sure there was at least one. At least one
11 was represented.

12 As I said, I don't believe, though -- I
13 can't recall any conference where we didn't have at least
14 one person from a chain representing.

09:27:53 15 Q. All right. And by "Chain," you mean Walgreens, CVS
16 or Walmart?

17 A. Yes.

18 Q. And this presentation that was done in Norfolk,
19 Virginia, would it have been limited to who could attend,
09:28:07 20 or anything like that?

21 A. No.

22 It was sent to every -- the invitation was
23 sent out by the Board of Pharmacy to every registered
24 location, every registered pharmacy, and then every
09:28:21 25 registered pharmacist in the state that the Board had on

1 its roster.

2 Q. So would the attendance invitation at least be to
3 Virginia pharmacists?

4 A. Yes.

09:28:32 5 Q. Okay. All right.

6 MR. LANIER: Your Honor, with that
7 foundation of --

8 THE COURT: Well, I --

9 MR. LANIER: Oh.

09:28:54 10 (Proceedings at side-bar:)

11 THE COURT: All right. Mr. Lanier, if you
12 have a document that shows that there were 410 Virginia
13 pharmacists there, coupled with what he said, I think it
14 is more probable than not that a bunch of them were in
09:29:23 15 the national chains.

16 Is it conceivable that you could have 410
17 Virginia pharmacists and none of them were at these three
18 national chains? It's conceivable, but it's certainly
19 not probable.

09:29:34 20 MR. LANIER: Okay. Your Honor, what we're
21 printing for you right now is the press release that was
22 done by the DEA that's still on their website. It speaks
23 specifically of this conference.

24 It calls it out by name, says the
09:29:47 25 conference was developed and designed to address the

1 growing problem of diversion of pharmaceutical controlled
2 substances throughout the United States.

3 Over 410 pharmacists, pharmacy technicians,
4 loss prevention personnel, and pharmaceutical students
09:30:04 5 attended. They received seven hours of instruction on a
6 variety of topics.

7 THE COURT: All right. Well, if he -- if
8 he can authenticate that, I'll allow him to proceed.

9 MR. LANIER: All right. Thank you, Your
09:30:20 10 Honor.

11 MR. MAJORAS: Your Honor --

12 (End of side-bar conference.)

13 BY MR. LANIER:

14 Q. Mr. Rannazzisi, we are going to run a hard copy up
09:30:35 15 for the Court's records, but for purposes of this I'll
16 just put it down here.

17 Are you familiar with the U.S. Department's
18 Diversion Control Division?

19 A. Yes, sir, I am.

09:30:48 20 Q. And where it talks about the DEA meetings and
21 events, the Pharmacy Diversion Awareness Conference of
22 May -- oops -- of May 30th and 31st, 2015, Norfolk,
23 Virginia, is that the same conference?

24 A. Yes, it is.

09:31:06 25 Q. Where it says, "The Drug Enforcement held a

1 pharmacy diversion conference , "and it says "Over 410
2 pharmacists, pharmacy technicians, loss prevention
3 personnel, and pharmaceutical students attended," does
4 that -- is that something you would recognize as being a
09:31:28 5 fair representation of the numbers attending?

6 A. Yes.

7 If it's in their website in that manner,
8 then it's based on the roster. Because it's a CE
9 program, everybody would be rostered, and so they would
09:31:42 10 have an accurate count.

11 MR. MAJORAS: Your Honor, I'm just going to
12 lodge the same objection.

13 THE COURT: All right. Overruled.

14 BY MR. LANIER:

09:31:56 15 Q. And in that regard -- in that regard, sir, I want
16 to go through a few of these slides.

17 Some of the testimony is what you've
18 already told us. Those, I don't want to spend any time
19 on because it's redundant, and it's just simply to make
09:32:12 20 sure that everybody understands you made the
21 presentation.

22 Okay?

23 A. Yes, sir.

24 Q. But some of it's got some new material.

09:32:19 25 First, why do you put the financial

1 disclosure statement in here?

2 A. Because it's a continuing education program, and I
3 have to show that I have no bias.

4 Q. All right. You have the next slide that you wrote,
09:32:33 5 "Goals and objectives."

6 Do you see that?

7 A. Yes, sir.

8 Q. I'd like you to discuss three of those that seem
9 relevant to our case.

09:32:42 10 The first bullet point, can you tell the
11 jury what it is and why you wrote it?

12 A. Because we always start off every presentation the
13 DEA does with an analysis of the problem. We show that,
14 you know, where we were, where we started, and how the
09:32:57 15 problem increased over time.

16 So it could be the abuse of
17 pharmaceuticals, it could be ER visits, it could be the
18 distribution of controlled substances into a certain
19 region or area.

09:33:08 20 We just want them to know where we start
21 and where we are now, and that forms the foundation of
22 the presentation.

23 Q. Would you look at your third bullet point goal and
24 objective, and read it, and let us know what you meant by
09:33:24 25 it?

1 A. "Identify methods of pharmaceutical diversion and
2 discuss how the pharmacist can prevent diversion in the
3 retail setting."

4 Again, we want -- this is geared more
09:33:35 5 towards the pharmacist. We want them to understand how
6 diversion occurs at the pharmacy level, and we want them
7 to understand what their role is in preventing diversion,
8 how they could stop diversion, and then give
9 a -- practical examples of how that occurs at the
09:33:57 10 pharmacy level.

11 Q. And then the final goal and objective, "Discuss the
12 pharmacist and corresponding responsibility," why did you
13 speak on that?

14 A. Because the pharmacist principal method of stopping
09:34:12 15 diversion is to exercise corresponding responsibility at
16 the presentation of those prescriptions.

17 He's the last stop, the last check before a
18 prescription gets into the hands of somebody that might
19 hurt themselves, and that's why corresponding
09:34:27 20 responsibility is important and we spend time on
21 corresponding responsibility during -- throughout the
22 presentation.

23 Q. All right. I want you to look at Slides 19 and 20.

24 Slide 19 has drug overdose mortality rates
09:34:43 25 per 100,000 people in 1999.

1 Do you see your slide?

2 A. Yes.

3 Q. If you look at Ohio as an example, can you explain
4 what the data is, or what it means?

09:34:57 5 A. Those are -- the -- less than -- greater than five
6 but less than 10 persons died per 100,000 people in 1999.

7 Q. And --

8 A. Based on an overdose mortality.

9 Q. And then you put another slide, your next slide,
09:35:17 10 Slide 20, is the same statistics but for 2010, eleven
11 years later.

12 Is that correct?

13 A. Yes.

14 Q. And if we look at it in eleven years later, take,
09:35:29 15 for example, Ohio, is it still greater than five and less
16 than 10?

17 A. No, it's greater than 15, less than 20.

18 Q. And why is that alarming to you, or was that
19 alarming to you such that you put it in there?

09:35:43 20 A. Well, it just shows that with the pharmaceutical
21 diversion, what we were seeing was an uptick, an
22 increase, almost doubling of the drug mortality.

23 And that's why that slide's there, just to
24 impress upon them that their responsibility is extremely
09:36:04 25 important to prevent mortality from continuing, drug

1 mortality continuing to occur.

2 Q. All right. Next, I want to jump to Slides 102 and
3 103.

4 102 is one where you've got a booklet.

09:36:19 5 Tell us about the cover of the booklet.

6 A. Yeah, that's the -- from the International
7 Narcotics Control Board. These are the narcotic drug
8 distribution -- narcotic drug consumption numbers for the
9 world from all countries. All countries that are
09:36:40 10 signatories to certain conventions have to submit what
11 their consumption numbers are.

12 Q. So if we look at the next page, Slide 103, you've
13 pulled out some statistics that I'd like you to discuss.

14 The first bullet point, can you tell us
09:36:57 15 what you are saying there?

16 A. For the United States, the United States consumed
17 99 percent of the world's Hydrocodone.

18 Q. Why is it significant to you that the U.S. consumes
19 99 percent of the world's Hydrocodone?

09:37:19 20 MS. FIEBIG: Objection, Your Honor. This
21 is expert testimony. He hasn't established that he knows
22 that the world consumes 99 percent -- that the U.S.
23 consumes 99 percent.

24 THE COURT: Well, I agree. I don't think
09:37:28 25 you've laid the foundation for all of this yet.

1 BY MR. LANIER:

2 Q. All right. Sir, when you as the DEA representative
3 presented, made this presentation to the pharmacists,
4 what were you -- why did you turn to the International
09:37:50 5 Narcotics Control Board for those statistics?

6 A. Because they maintain the statistics for the world
7 on consumption.

8 We all have to submit our consumption
9 records, our receipt and consumption records to the INCB.

09:38:06 10 In fact, at DEA there's a unit that that's
11 all there -- that's what their responsibility is, to send
12 all the consumption records to the INCB.

13 That's included in this report. And I
14 personally reviewed that report, and the statistics that
09:38:21 15 are in this slide were taken directly from that report
16 that I personally reviewed.

17 Q. And did you find that report to be reliable such
18 that you could rely on it in your job, to do your job?

19 A. I relied on that report to do my job, but also to
09:38:37 20 make these presentations.

21 And that report was updated every year and
22 the slides were updated accordingly.

23 Q. All right.

24 MR. LANIER: Then with that, Your Honor,
09:38:46 25 may I ask a question about why he chose that statistic?

1 MR. DELINSKY: Objection.

2 THE COURT: You may.

3 MR. DELINSKY: Hearsay, Your Honor.

4 THE COURT: Overruled.

09:38:58 5 BY MR. LANIER:

6 Q. Sir, please tell us why as the DEA man making this
7 presentation, person making this presentation, why did
8 you choose to put that bullet point in there.

9 A. Because in the United States at this point in time
09:39:10 10 Hydrocodone was the number one prescribed drug in the
11 United States, period.

12 It was the most prescribed drug of any
13 drug, lipid medication, cardiac medication, thyroid
14 medication. It was the number one prescribed drug.

09:39:27 15 And in my opinion, while I was working at
16 DEA, we saw wholesale abuse of Hydrocodone, and it
17 just -- it struck me that we were consuming 99 percent of
18 the world's Hydrocodone, we -- it was the number one
19 prescribed drug, and there had to be something going on
09:39:52 20 other than appropriate medical care with this drug.

21 Q. The only other bullet point I need to talk to you
22 about on this page is the second one.

23 "U.S. was the country with the highest
24 consumption of Oxycodone, 82 percent."

09:40:08 25 Why did you choose that bullet point to put

1 into your presentation?

2 A. Because Oxycodone was right up there with
3 Hydrocodone as the most abused opioids in the United
4 States at that time.

09:40:20 5 Q. All right. The next slide I draw your attention to
6 is Slide 126.

7 Would you tell us why you chose to put this
8 slide in there and what it means?

9 MR. DELINSKY: Same objections, Your Honor.

09:40:42 10 THE COURT: Overruled.

11 A. What we were -- this slide, what this slide
12 reflected was the increase in opioid sales as related to
13 the increase in opioid deaths, and then the increase in
14 opioid treatment admissions.

09:41:03 15 And what it showed is as opioid sales
16 increased, opioid deaths increased, and opioid treatment
17 admissions also increased.

18 BY MR. LANIER:

19 Q. Sir, you had another slide that is Slide 154.

09:41:18 20 I showed this to the jury in opening, but
21 I'd like you to explain why you had this slide, put this
22 slide in your presentation, and what it meant.

23 MR. DELINSKY: Objection.

24 Hearsay.

09:41:36 25 THE COURT: Well, you've got to lay a

1 foundation.

2 BY MR. LANIER:

3 Q. All right. Sir, did you prepare Slide 154?

09:41:49

4 A. I -- I began the preparation of Slide 154. I knew
5 what I wanted, but technically I couldn't do it so I
6 passed it off to my tech team. I think it was John
7 Bostic who actually did the slide, sent it back to my
8 exec, and we put it in the slide.

9 But this is exactly what I wanted. He's
09:42:04 10 really good with PowerPoint.

11 Q. In other words, if we were doing your actual
12 PowerPoint, is this doing what they call the animation
13 feature in PowerPoint, where it makes the arrow and then
14 changes the colors as it goes along?

09:42:15

15 A. Yes.

16 It was -- it was animated, and it was they
17 call it the slide progression, where it moves.

18 It starts in Florida. If you see the
19 presentation, it would go to Florida, and then I'd click,
09:42:26 20 and it would pop up Georgia with the slide, and then
21 click, and it would go to Tennessee, and click, and go to
22 Kentucky, and so on.

23 Q. Now, in this regard, where did you get your
24 information from? And by that I mean, is this something
09:42:42 25 where you were just relying on what people told you or

1 was this information that you knew based upon your
2 investigations?

3 A. No, we knew the investigations.

4 I can't take credit for thinking about this
09:42:57 5 slide, because this slide evolved from a conversation I
6 had with the head of Georgia Bureau of Narcotics. He was
7 telling me that --

8 Q. We don't want to ask you what he was telling you.

9 A. Okay.

09:43:13 10 But he informed me that they were -- well,
11 the fact is, based on my conversation, I decided that a
12 slide progression would be in order to show that the
13 migration of the clinics moving from one point to another
14 was important.

09:43:27 15 Q. And when you were making this presentation as the
16 DEA, were you basing it upon your investigation into
17 these matters, whether it's discussing it with one person
18 or the cumulative knowledge you had from Florida, or
19 whatever it may be?

09:43:44 20 A. It was -- it was based on the investigations that
21 we were doing and that we were also doing in conjunction
22 with the states, yes.

23 Q. Okay. All right. And what were you trying to
24 convey in this slide?

09:43:58 25 MR. DELINSKY: Objection, Your Honor.

1 BY MR. LANIER:

2 Q. What was the DEA concern?

3 MR. DELINSKY: Sorry, Mr. Lanier.

4 Objection. Hearsay.

09:44:03 5 THE COURT: I'll allow the second question.

6 BY MR. LANIER:

7 Q. What was the DEA concern you were trying to
8 express?

9 A. Well, we were trying to show that as we
09:44:14 10 concentrated on one area, they would migrate away from
11 that area into another area.

12 So the pain clinics were mobile, they were
13 just -- they kept moving, and we were just always one
14 step behind them; but they were always moving.

09:44:28 15 So what we were trying to say is the pain
16 clinics aren't just in Florida, they're everywhere.

17 If I -- if I squeeze a balloon in Florida
18 they're going to move somewhere else, and that's why you
19 have to be vigilant, because they're in your backyard,
09:44:44 20 just like they're in Florida.

21 Q. So did you find it also present in Ohio on this
22 migration?

23 A. Yes.

24 Q. If we look at Slide 155 next, did you make a
09:45:01 25 presentation point that the vast majority of patients

1 visiting Florida pain clinics come from out of state?

2 A. Yes.

3 Q. Did you tell them which states were notable from
4 your investigations?

09:45:17 5 A. Yes, I did.

6 Q. And was Ohio one of those states?

7 A. Yes, it was.

8 Q. And so Slide 155, why did you put Ohio in there as
9 one of the states where it fits under "Vast majority of
09:45:36 10 patients visiting Florida pain clinics come from out of
11 state"?

12 Why Ohio?

13 A. Because we had information that we were acting on
14 that Ohio, citizens of Ohio were traveling down to
09:45:48 15 Florida to visit pain clinics and then come back.

16 Q. Okay. Sir, if you look now at Slide 181, this is
17 stuff you discussed yesterday, so I don't want to get
18 into it in depth. It's repetitive.

19 But did you at least present on the checks
09:46:08 20 and balances of the Controlled Substances Act?

21 A. Yes, sir, I did. I did.

22 Q. And did you talk about the obligation of
23 distributors?

24 A. Yes, sir.

09:46:24 25 Q. And again, the distributors are what you called

1 yesterday what?

2 A. Distributors are wholesalers, they are the people
3 who move the drugs from the manufacturers into the
4 pharmacies.

09:46:36 5 Q. All right. And did you also speak about the
6 responsibility of pharmacists?

7 A. Yes.

8 Q. I'm showing you Slide 189.

9 Tell us, first of all, what is the AACP
09:46:53 10 program material? What does that mean that you reference
11 there?

12 A. I believe that's the American Association of
13 Colleges of Pharmacy.

14 Q. All right.

09:47:01 15 A. And the program material is it's the material they
16 handed out during their -- during their annual event.

17 Q. Why did you think it important to put a slide that
18 says that pharmacists have a responsibility to protect
19 patients, as well as the public, from the abuse, misuse,
09:47:21 20 and diversion of prescription drugs?

21 A. Because from the time that I was a pharmacy
22 student, that was -- that was what a pharmacist was
23 supposed to do.

24 Pharmacist is not a clerk. He's not just
09:47:40 25 going to hand out prescriptions.

1 A pharmacist has certain skill sets that
2 nobody else in the health delivery system has, and the
3 pharmacist has to use those skill sets to protect their
4 patients.

09:47:52 5 What they're doing is, what AACP did is
6 just to remind the pharmacists that they're there for a
7 reason.

8 And in our case, when we talk to the
9 pharmacists, we impressed upon them that that's what
09:48:03 10 corresponding responsibility is, and that's what you're
11 supposed to be doing. You're supposed to be protecting
12 your patients, protecting the integrity of the system,
13 making sure that they are not harmed by their --

14 Q. Now, your slide says not only a responsibility to
09:48:19 15 protect patients, but it talks "as well as the public."

16 How is the public protected from abuse,
17 misuse, and diversion?

18 A. Because in addition to protecting your patients,
19 some of the patients are drug-seekers, but they're
09:48:36 20 drug-seekers for a different reason. They're not
21 necessarily drug-seekers because they're going to ingest
22 their drugs and harm themselves.

23 They're drug-seekers because they're
24 getting the drugs for sale in the public domain, you
09:48:49 25 know, out in the communities.

1 And so that's how you are protecting.

2 Again, the pharmacist is there to protect, make sure the
3 drugs aren't diverted.

4 Q. Your next slide that I want to draw attention to is
09:49:00 5 Slide 190, still under "Checks and balances" under the
6 "Controlled Substances Act."

7 But you say there that pharmacists are the
8 last line of defense.

9 What did you mean by that?

09:49:09 10 A. It's the last stop in the health care delivery
11 before the prescription is handed to the patient, and so
12 the pharmacist using corresponding responsibility, that's
13 the last line of defense before that prescription can get
14 into the hands of someone that's not using it for a
09:49:27 15 medical purpose.

16 Q. And Slide 192, you've got a picture of a kind
17 pharmacist there with the same tag line.

18 Fair?

19 A. Yes.

09:49:36 20 Q. And is it an important role in the whole system,
21 the closed system, for the pharmacist to see their job as
22 the last line of defense?

23 MR. MAJORAS: Objection.

24 Opinion testimony. Leading.

09:49:52 25 THE COURT: All right.

1 MR. LANIER: It's opinion, Judge. I
2 withdraw it.

3 THE COURT: Also, leading.

4 MR. LANIER: Yeah, I'll pull that down,
09:50:03 5 Your Honor. I apologize.

6 BY MR. LANIER:

7 Q. Next, I'd like to draw your attention to Slide 195.

8 This is the first of a series of slides
9 where you talk about potential red flags.

09:50:13 10 Can you explain, please, what you meant by
11 that?

12 A. A red flag is just an indicator for the pharmacist,
13 upon prescription presentation.

14 So if -- when the pharmacist gets the
09:50:28 15 prescription, there are certain things that he reviews as
16 part of the elements of the prescription, and some things
17 just jump out at you.

18 Q. The jury's heard about these from Mr. Catizone, and
19 I'm not going to be repetitive except to ask you, is this
09:50:47 20 the kind of thing that was made up for a courtroom when
21 you did this?

22 A. No.

23 These, these red flags were actually
24 observed during investigations that we had related to
09:51:01 25 pharmacies, bad pharmacies, bad pharmacists.

1 Q. You give, I don't know, six on the first page and
2 then you've got another slide, number 196, where you give
3 another five.

4 Are these eleven the only red flags that
09:51:19 5 exist?

6 A. No. No. Absolutely not.

7 But we base these red flags on the cases
8 we're discussing that day, and so these are red flags
9 that were related to two cases.

09:51:36 10 The previous slide, *East Main Street*
11 *Pharmacy* and the *Holiday* case.

12 Q. All right. And we'll talk about *Holiday* in
13 particular in a little bit, but to remind us, is *Holiday*
14 a case that was against which pharmacy?

09:51:48 15 A. CVS.

16 Q. Then you put another slide, 197, which you only
17 have very little verbiage on it, just a few words.

18 What do you say on Slide -- what were you
19 saying with Slide 197?

09:52:07 20 A. Well, it's a slide that we put up, and I said,
21 well, the way I present it is I say, "Well, you know, now
22 that I've showed you what are the red flags, what do you
23 do? What do you do with these red flags?"

24 And so what happens? You resolve.

09:52:24 25 And then I discuss the resolution process.

1 Q. Which is Slide 170 -- I mean 198. "Resolution is
2 comprised of many factors."

3 A. Yes.

4 Q. Can you give us an idea of why you wrote this slide
09:52:41 5 and what you were trying to explain?

6 A. This slide is written to give them kind of a map,
7 guidelines, to resolution.

8 We want them to understand that this
9 process is not a one-step process; call the doctor, the
09:53:02 10 doctor says okay. There's many steps to the process.

11 But each one of those steps is crucial
12 because --

13 (Pause.)

14 MS. SULLIVAN: I'm sorry, Your Honor. My
09:53:16 15 apologies, Your Honor.

16 MR. LANIER: Objection to relevance.

17 (Laughter.)

18 BY MR. LANIER:

19 Q. Go ahead. Sir, the question was, you were saying
09:53:25 20 "This slide was written to give them kind of a map,
21 guidelines, to resolution. We want them to understand
22 this process is not a one-step process."

23 Continue.

24 A. It's not a one-step process.

09:53:34 25 Just calling the doctor is not enough. If

1 it's a bad doctor, he's going to say "The prescription's
2 okay."

3 You've got to -- you've got to ask. You've
4 got to examine the doctor, say, "Well, explain exactly
09:53:45 5 what you're trying to" -- "what your goals are. What are
6 you doing here?"

7 Because chances are the doctor's going to
8 be very open, and he might say there was a problem with
9 this prescription, and, you know, then they can open the
09:53:58 10 dialogue.

11 But if the doctor just says, "Look, it's
12 fine, don't worry about it, fill it," that's not
13 corresponding responsibility analysis. You're not doing
14 your job. You're just doing, you know, what a
09:54:12 15 nonprofessional would do, just accept the offer.

16 You're abdicating your responsibilities.

17 Q. All right. The last Slide I'd like to draw your
18 attention to in this deck is the very next one, "Who do I
19 call to report a practitioner?"

09:54:28 20 Why in your job at the DEA did you put this
21 slide on here, and then can you tell us what it meant?

22 A. During these PDACs, these presentations, we have
23 pharmacists come up during breaks or afterwards and ask
24 us, "I've got a bad doctor, what should I do with it,
09:54:48 25 what should I do with them."

1 And I thought that maybe we should start,
2 you know, putting that into the presentation, because
3 obviously they don't know how to handle bad doctors.

4 So, you know, we always go to State Board
09:55:03 5 of Pharmacy, Medicine, Nursing or Dental, that's also the
6 first step, because eventually they're going to call us.

7 But then you can go state and local county
8 police, the DEA local office, and the tactical diversion
9 squads. The health department, because some states the
09:55:20 10 state health department has oversight over the medical
11 practitioners.

12 And then finally, if it's Medicare or
13 Medicaid fraud, which we have seen a lot of, we ask them
14 to call HHS OIG. And that was so important that HHS OIG
09:55:37 15 started going to all the presentations with us because
16 they were picking up tips on Medicare and Medicaid fraud
17 during those presentations, and they actually gave
18 presentations on Medicare and Medicaid fraud to the
19 people, to the participants.

09:55:49 20 Q. All right. Setting aside that PowerPoint now, on
21 specific defendant interactions, I want to talk to you
22 about three defendants in particular.

23 Let's start with CVS.

24 MR. LANIER: Your Honor, may I go side-bar
09:56:22 25 for just a moment? Take it out of my time, but I just

1 realized something.

2 (Proceedings at side-bar:)

3 MR. LANIER: Your Honor, I spent very, very
4 minimal time with this gentleman, and I did not myself
09:56:43 5 warn him not to tell amounts, through your motion in
6 limine on amounts.

7 I don't think he would blurt that out, but
8 I would feel a lot safer if you or I or the defendants
9 could go say to him somehow right now, "Just make sure
09:57:03 10 you don't talk about any amounts or what any agreements
11 or penalties were in terms of money."

12 MR. DELINSKY: Your Honor, I'd only ask
13 that that admonition be made outside the presence of the
14 jury.

09:57:19 15 THE COURT: All right.

16 MR. LANIER: It doesn't come up on *Holiday*.

17 THE COURT: All right. Just say
18 that -- why don't you say specifically, I'm not going to
19 ask you any of the details.

09:57:35 20 MR. LANIER: Of the penalties? No.

21 I can try to say it, and if not, I'll hold
22 those questions on the CVS agreement until a break.

23 THE COURT: Yeah. Why don't you do that,
24 because we'll take a break in half an hour.

09:57:51 25 MR. LANIER: Okay.

1 THE COURT: And you can caution him that
2 you're not going to ask and he's not to --

3 MR. LANIER: Got it. Got it, Judge.

4 THE COURT: Answer that way.

09:57:58 5 MR. LANIER: I got it, Your Honor.

6 Thank you, Judge.

7 (End of side-bar conference.)

8 BY MR. LANIER:

9 Q. All right. Mr. Rannazzisi, I need you to focus
09:58:12 10 very carefully on my questions, please.

11 A. Okay.

12 Q. And keep your answers tight.

13 A. Okay.

14 Q. All right. Tell us, first, what your involvement
09:58:27 15 was -- the jury's heard about *Holiday*, the *Holiday CVS*
16 case.

17 You referenced it just briefly a few
18 moments ago, right?

19 A. Yes.

09:58:36 20 Q. We spoke yesterday about the various processes that
21 are involved in trying to resolve a situation that comes
22 up.

23 Do you remember that discussion?

24 A. Yes.

09:59:00 25 Q. I think this was the PowerPoint or the presentation

1 card that I made while we were talking, an enforcement
2 proceeding.

3 Was *Holiday* an enforcement proceeding
4 against CVS?

09:59:15 5 MR. DELINSKY: Objection, Your Honor.

6 THE COURT: Overruled.

7 A. Yes, it was.

8 BY MR. LANIER:

9 Q. Do you know -- well, where were you involved in
09:59:27 10 this enforcement proceeding? You personally, because
11 you're here as a personal witness.

12 So what was your level of involvement?

13 MR. DELINSKY: Your Honor, could we
14 side-bar for 10 seconds?

09:59:41 15 THE COURT: All right.

16 (Proceedings at side-bar:)

17 MR. DELINSKY: Your Honor, this already is
18 extremely misleading.

19 This case was not against CVS. It was a
09:59:59 20 case against two particular pharmacies, the numbers of
21 which are identified in every document associated with
22 the case, including the *Holiday* opinion and order.

23 That needs to be made clear. It's not
24 clear.

10:00:10 25 THE COURT: All right. He can make that

1 but, you know, the order may have been -- CVS is the
2 registrant, so --

3 MR. LANIER: Yeah.

4 THE COURT: That is against CVS, the
10:00:18 5 registrant, but you should make clear that it involved
6 two stores.

7 MR. LANIER: Two stores.

8 THE COURT: And I guess in Florida.

9 MR. LANIER: I will, Your Honor, and I
10:00:27 10 guess --

11 MR. DELINSKY: CVS was not the registrant.
12 Each individual store is the registrant.

13 THE COURT: I don't think so.

14 MR. LANIER: Yeah, you're right, Your
10:00:34 15 Honor, and the *Holiday* decision even says it applies to
16 the CVS big-time entity.

17 THE COURT: All right.

18 MR. LANIER: Thank you.

19 (End of side-bar conference.)

10:00:44 20 BY MR. LANIER:

21 Q. Now, the *Holiday* case pertained to how many CVS
22 stores were you all looking at?

23 A. There was two stores in Sanford, Florida, 219 and
24 5195.

10:01:10 25 Q. And the two stores in Sanford, Florida, both

1 registrants?

2 A. Both were DEA registrants, yes.

3 Q. All right. So if we go back to the enforcement
4 proceeding, did you have an administrative action
10:01:35 5 triggered?

6 A. Yes, we did.

7 Q. Did y'all proceed with that administrative action?

8 A. Yes, we did.

9 Q. Did you reach a point of even the written decision?

10:01:51 10 A. Yes. A final order was handed down by the
11 Administrator, yes.

12 Q. Tell us what time range we're looking at here.

13 A. The administrative inspection warrant was done at
14 the end of 2011.

10:02:10 15 The immediate suspension order and order to
16 show cause was done in 2012, probably February of 2012,
17 and I think the final order was handed down somewhere
18 later in the year, 2012.

19 Q. All right. And so --

10:02:35 20 MR. LANIER: I'm sorry, I thought I heard
21 Your Honor.

22 Bad hearing.

23 THE COURT: No, I was silent.

24 MR. LANIER: Okay.

10:02:42 25 THE COURT: I was.

1 MR. LANIER: I'm nervous, Judge.

2 BY MR. LANIER:

3 Q. All right. So you said that you got the written
4 decision at the end of 2012.

10:02:53 5 I'd like the jury to hear, please, where
6 you had personal touches in that process, Joe Rannazzisi.

7 A. I had -- I oversaw the investigation pretty much
8 from start-to-finish.

9 My -- I had people from headquarters
10:03:16 10 deployed to help out with that investigation. It
11 was -- it was an investigation that pretty much I oversaw
12 right through the end, I mean right until we got the
13 final order.

14 Q. Okay. And in overseeing that investigation, did
10:03:35 15 you issue yourself warnings or orders to show cause or
16 any of the things that you spoke to us about yesterday in
17 this process?

18 A. I approved the orders to show cause.

19 I believe those were ISOs, immediate
10:03:51 20 suspension orders, so the Administrator ultimately signed
21 them.

22 Normally an order to show cause would be
23 signed by the Deputy Assistant Administrator, which at
24 that point in time during my tenure was me.

10:04:01 25 But if we go after -- if we do an ISO or

1 seek an ISO or -- it means that we're immediately going
2 to take, take their registration, and that is done
3 through a -- through the Administrator.

4 Q. We don't know -- I don't know what an ISO is.

10:04:23 5 What's an ISO?

6 A. An ISO is an immediate suspension order.

7 During an order to show cause, I serve you
8 an order to show cause as a pharmacy, but you could still
9 practice until the case is adjudicated, so you could
10:04:38 10 still handle controlled substances.

11 An immediate suspension order is special.
12 An immediate suspension order means that what you're
13 doing is an imminent threat -- well, back then it meant
14 what you're doing is an imminent threat to public health.

10:04:52 15 Q. All right.

16 A. And we have the authority in the Controlled
17 Substances Act to take the registration if the
18 Administrator finds that there's an imminent threat.

19 Q. Okay.

10:05:04 20 A. So we executed the order to show cause, and then
21 took -- we also executed an immediate suspension order.

22 Q. And in this regard, was there ultimately a
23 resolution -- and this is a yes or no question -- was
24 there ultimately a resolution with CVS on these matters?

10:05:34 25 A. Yeah, a final order was handed down by the

1 Administrator, and they lost the registrations for those
2 two stores.

3 Q. Okay. Does the order itself contain the
4 language -- so I don't mean to get you to repeat
10:05:56 5 it -- does the order itself contain the language of the
6 findings of the Administrative Law Judge?

7 A. Yes. The findings of the Administrative Law Judge
8 are embedded in the final order.

9 Q. Did you end up testifying, either written or
10:06:14 10 orally, in that trial?

11 A. I didn't testify in the administrative hearing, but
12 I did file a written declaration regarding my role and
13 what I was involved with with the Court in D.C. that was
14 also looking at the case on a temporary restraining order
10:06:36 15 that was filed.

16 Q. All right. The next set of events I'd like to talk
17 to you about concern Walmart, and specifically the
18 agreement that was reached in 2011 that you signed
19 arising out of California.

10:07:00 20 Do you have memory of that?

21 A. Yes, I do.

22 Q. Without going into the details of the agreement,
23 would you please give us a general idea of what was
24 involved in that case?

10:07:19 25 And I've got the document, if it helps you

1 to look at it to refresh your memory.

2 MR. MAJORAS: Objection. We just renew our
3 objection on this, Your Honor.

4 THE COURT: Overruled.

10:07:28 5 A. I believe that case -- well, that case involved a
6 Walmart Pharmacy in San Diego.

7 Q. You are correct.

8 I'm going to put it down so you can look at
9 it. I've got --

10:07:45 10 MR. LANIER: Your Honor, this is redacted
11 appropriately.

12 Q. -- Plaintiffs' Exhibit 14711. Is this -- is that
13 your signature at the end for the Department of Justice?

14 A. Yes, it is.

10:08:07 15 Q. This administrative agreement in the background, it
16 talks about the OTSC.

17 What does that stand for?

18 A. Order to show cause.

19 Q. All right. So that's back in our picture we had
10:08:24 20 looked at, that's one of the processes along the way?

21 A. Yes, sir.

22 Q. Here it is. I can't find it.

23 All right. "Order to show cause alleged
24 that Walmart," and that's a number. Is that the
10:08:42 25 registrant number, to your understanding?

1 A. No. That's their store number.

2 Q. Oh, okay. So that Walmart store, which is in San
3 Diego, according to the previous paragraph, "improperly
4 dispensed controlled substances to individuals based on
10:09:02 5 purported prescriptions issued by physicians who were not
6 licensed to practice medicine in California."

7 Is that appropriate, the conduct?

8 A. Depends on the state law, but generally no.

9 Q. "Dispensed controlled substances to individuals
10:09:26 10 located in California based on Internet prescriptions
11 issued by physicians for other than a legitimate medical
12 purpose and/or outside the usual course of professional
13 practice, in violation of federal and state law."

14 How is that allegation, if true, a
10:09:45 15 violation of the federal law that you were seeking to
16 enforce as you understood it in the DEA?

17 A. During my time, those Internet prescriptions, as I
18 explained yesterday, generally there was no bona fide
19 patient/doctor relationship.

10:10:05 20 They were -- they were obtained over the
21 Internet and, therefore, they were invalid. And so
22 that's why the order to show cause was issued.

23 Q. All right. You continued to note, "Three,
24 dispensed controlled substances to individuals that
10:10:23 25 Walmart Pharmacy" and it gives the number, "knew or

1 should have known were diverting the controlled
2 substances."

3 And it references Appendix A.

4 Can you explain why that was a serious
10:10:39 5 allegation?

6 A. Again, because it's a violation of the Controlled
7 Substances Act and it's a violation that we would use as
8 a foundation for the order to show cause.

9 Q. "In addition to the allegations raised in the order
10:10:53 10 to show cause, the DEA's investigation also revealed that
11 that Walmart Pharmacy was allegedly dispensing controlled
12 substances based on prescriptions that contained expired,
13 suspended, and/or invalid DEA numbers."

14 Why is that improper conduct?

10:11:13 15 A. Because if the prescriber of the medication does
16 not have a valid DEA number or it's suspended, expired,
17 whatever, it's not a valid prescription.

18 The prescription is invalid and, therefore,
19 it's not a prescription.

10:11:33 20 Q. And "That Walmart Pharmacy was allegedly refilling
21 prescriptions for controlled substances too early."

22 Why is that an issue?

23 A. Because one of the red flags that we see is
24 patients going back to the pharmacy way too early to get
10:11:49 25 medication.

1 Q. All right. Now, in this agreement that was entered
2 into, there are certain -- if we go to Page 2 --
3 obligations that Walmart took upon itself as part of the
4 agreement, but before we read those, I think in fairness
10:12:08 5 we need to note point number two.

6 Do you see the number two?

7 A. Yes, sir.

8 Q. "This agreement is neither an admission by Walmart
9 of liability or of any allegations made by the DEA in its
10:12:24 10 order to show cause and its investigation of Walmart
11 Pharmacy, nor a concession by the DEA that its
12 investigation and allegations are not well-founded."

13 Did I -- I didn't get it exactly
14 word-for-word, but did I basically get that right?

10:12:44 15 A. Yes, sir, you did.

16 Q. All right. So with that no admission or concession
17 language, I'd like you to talk about the obligations that
18 Walmart entered into that you signed off on for the DEA.

19 The first one, "Walmart agrees to maintain
10:13:04 20 a compliance program, updated as necessary, to detect and
21 prevent diversion of controlled substances by the
22 Controlled Substances Act and applicable regulations."

23 What did you understand that to mean?

24 A. We were directing them to make sure that they had a
10:13:25 25 compliance program, that their pharmacists -- that the

1 corporation and the pharmacists would agree to, that
2 would prevent the diversion of controlled substances,
3 something that would stop diversion at their pharmacies.

10:13:45 4 Q. And when it says "Obligations of Walmart," did
5 you -- who did you understand you were entering into this
6 agreement with that's on the front page I'm highlighting
7 now?

8 A. It would be the corporation who owns the
9 pharmacies, and generally it's because the corporation
10:14:02 10 has control over the pharmacies.

11 So if the corporation agrees to the
12 compliance program, we would assume that the pharmacies
13 would move forward with the compliance program.

14 Q. And in these obligations to "maintain a compliance
10:14:19 15 program, updated as necessary," it says that "It shall
16 include procedures to identify the common signs
17 associated with the diversion of controlled substances,"
18 and then it gives a list, "including but not limited to."

19 Can you go through some of these and
10:14:39 20 explain why these are important for Walmart to agree to
21 maintain a compliance program?

22 A. Sure.

23 First of all, doctor shoppers, doctor
24 shoppers are individuals who go from one pharmacy to
10:14:58 25 another looking to obtain prescriptions. They generally

1 have either fraudulent prescriptions or prescriptions
2 from a bad practitioner.

3 That is easily stopped by looking at the
4 local prescription drug monitoring program. A pharmacist
10:15:17 5 would look at the Prescription Drug Monitoring Program
6 and he could tell exactly where that patient or that
7 drug-seeker has been.

8 "Early refills," just a standard statement
9 to the pharmacist that early refill is not -- is not
10:15:32 10 appropriate, unless there's a circumstance.

11 Now, there's always a circumstance where an
12 early refill is necessary, but not in all cases. And
13 it's an exception; it's not the rule.

14 "Altered or forged prescription," teach the
10:15:53 15 pharmacist what to look for in an altered or forged
16 prescription, have a system in place to determine whether
17 a prescription is altered or forged, including calling
18 the doctor.

19 "Prescriptions written by doctors not
10:16:05 20 licensed to practice medicine in the jurisdiction where
21 the patient is located," that's looking up the doctor,
22 looking up the DEA number, finding out where he's
23 located.

24 And "Written for a legitimate medical
10:16:18 25 purpose in the usual course of professional practice,"

1 that's corresponding responsibility. Have a program in
2 place to make sure that the pharmacist is exercising his
3 responsibility for corresponding responsibility analysis.

4 Q. You go on to note, "The program shall also include
10:16:37 5 the routine and periodic training of all Walmart
6 employees, including new employees, responsible for
7 controlled substances regarding their responsibilities
8 under the CSA and regarding relevant elements of the
9 compliance program."

10:16:54 10 Why is that an important aspect of the
11 agreement?

12 A. Because pharmacists are always coming in and
13 leaving. Pharmacists are -- you know, the whole
14 landscape of diversion changes, and the compliance
10:17:11 15 program should change as the -- as diversion changes.

16 So all we're saying is you should have
17 periodic training to update your pharmacists on changes
18 within the program and also changes in the world of
19 diversion.

10:17:29 20 Q. Then the last part of this paragraph that I'd like
21 you to explain is, "This compliance program shall apply
22 to all current and future Walmart pharmacies registered
23 with the DEA."

24 Does that include nationwide?

10:17:45 25 A. Yes.

1 Q. Is this a -- "Walmart acknowledges and agrees that
2 the obligations undertaken in this subparagraph do not
3 fulfill the totality of its obligations under the CSA and
4 its implementing regulations."

10:18:02 5 Explain what you mean by that, please.

6 MR. MAJORAS: Objection.

7 Opinion testimony.

8 MR. LANIER: Okay. Let me ask it this way.

9 BY MR. LANIER:

10:18:08 10 Q. Would you explain why this was important to you
11 when you put your signature on it?

12 A. Well, during my tenure at DEA, there are several
13 different areas of the Controlled Substances Act and the
14 regulations that are not covered under this agreement.

10:18:23 15 We wanted to make sure that they understood that there
16 were other areas within the Controlled Substances Act
17 that they also had to comply to; not just what was in the
18 agreement.

19 Q. All right. So with the Walmart California
10:18:38 20 agreement out of the way, what I'd like to do is I've
21 selected a Walgreens agreement that has been marked as
22 Exhibit Number 15, and so let's look at Walgreens next.

23 MR. SWANSON: Your Honor, we'll renew our
24 objection to the exhibit.

10:18:57 25 THE COURT: Overruled.

1 BY MR. LANIER:

2 Q. In reference to Walgreens, sir, this is a
3 memorandum of agreement entered into by and between the
4 U.S. Department of Justice, the U.S. Drug Enforcement
10:19:26 5 Administration, and Walgreen Company and it's
6 wholly-owned subsidiaries.

7 Do you see that?

8 A. Yes, sir.

9 Q. And are you also familiar with this action and
10:19:41 10 agreement?

11 A. Yes, sir, I am.

12 Q. Now, the document itself shows that this was signed
13 by Michele Leonhart instead of you.

14 Why is that signature there?

10:20:00 15 A. We had -- the Administrator Leonhart began to sign
16 the -- all of the settlement agreements after 2011.

17 Q. All right. Was this one that you looked at or
18 signed off on, or approved internally within the DEA?

19 A. Well, all settlement agreements would come through
10:20:28 20 my office before they went to Administrator Leonhart.

21 There's a system, it's called a chop
22 system, but if a settlement comes to me and I have
23 questions with it, it has to be resolved before it goes
24 up to the Administrator.

10:20:43 25 If the Administrator doesn't -- didn't see

1 my initials or my chop on the final, it would have been
2 sent back for me to review.

3 So, yes, I see all the settlement
4 agreements.

10:20:56 5 Q. All right. In the section entitled "Procedural
6 background," we see under Paragraph 6 that "On November
7 26th, 2012, the DEA, by its Deputy Assistant
8 Administrator Joseph T. Rannazzisi" -- that's you?

9 A. Yes, sir.

10:21:15 10 Q. What's T stand for?

11 A. Thomas.

12 Q. Okay -- "Joseph T. Rannazzisi issued three" -- what
13 are the OTSCs again?

14 A. Orders to show cause.

10:21:25 15 Q. -- "to Walgreens retail pharmacy," and then it
16 lists several stores.

17 Is that right?

18 A. Yes, sir.

19 Q. And I think, is it three of them, it looks like.

10:21:39 20 It continues on the back.

21 A. Yes, sir.

22 Q. Question: Why did you issue orders to show cause
23 to those three Walgreens stores?

24 A. Because of the violations that we found during our
10:21:55 25 investigation went to the level that we believed an order

1 to show cause was appropriate.

2 Q. And then it says, "On February 4th, 2013, the DEA,
3 by Deputy Assistant Administrator Rannazzisi, issued an
4 order to show cause," and it's got another store in
10:22:20 5 Florida.

6 Do you see that?

7 A. Yes, sir.

8 Q. And by the way, at this point in time, orient us
9 this to the *Holiday* case time-wise.

10:22:38 10 A. These orders to show cause were after the *Holiday*
11 CVS case.

12 Q. Was the *Holiday* case from the DEA's perspective a
13 fairly notable event in the U.S.?

14 MR. DELINSKY: Objection, Your Honor.

10:22:59 15 THE COURT: Overruled.

16 A. During my time it was, because it was -- it was a
17 chain drugstore, and up until that point in time we
18 didn't have multiple -- I don't believe we had multiple
19 chain drug stores going into an order to show cause
10:23:20 20 hearing.

21 So, yes, it was -- it was different. It
22 was a different event.

23 BY MR. LANIER:

24 Q. But when *Holiday* happens, is that done
10:23:33 25 confidentially, or is that something people in the

1 business would know about?

2 A. Oh, no, it was in the news, and people would
3 understand. Plus the final order is a record of an
4 agency decision and an agency -- what the agency believed
10:23:53 5 was the violation.

6 So the final order in and of itself is
7 notice.

8 We also provided notice through the media.
9 The Department of Justice, I believe, and DEA both put
10:24:06 10 out press releases on it to tell the world this is what
11 happened and this is why it happened.

12 Q. All right. Then on February 11th, a week later,
13 the DEA, by you, issued another order to show cause for
14 another store in Florida, for Walgreens.

10:24:24 15 Fair?

16 A. Yes, sir.

17 Q. And why did you do that order to show cause?

18 A. Again, the violations rose to the level that an
19 order to show cause was necessary.

10:24:36 20 Q. Then finally, Paragraph 9, on February 19th, 2013,
21 you issued another order to show cause for another
22 Walgreens store in Florida.

23 Anything peculiar or different about that
24 one, or same reasons?

10:24:56 25 A. Same reasons.

1 Q. Then it looks like all of those seven cases were
2 consolidated into one proceeding for hearing purposes.

3 Is that right?

4 A. Yes, sir.

10:25:07 5 Q. Now, in this stipulation and agreement section, it
6 says that -- it references the facts that are listed in
7 an appendix, that if proven would constitute grounds
8 under which the DEA could revoke the registration of
9 Walgreens Jupiter.

10:25:27 10 And then it speaks of the other stores as
11 well.

12 Do you see that?

13 A. Yes, sir.

14 Q. And then it says, "Walgreens acknowledges that
10:25:36 15 suspicious order reporting for distribution to certain
16 pharmacies did not meet the standards identified by DEA
17 in three letters from the Deputy Assistant Administrator,
18 Office of Diversion Control, that were sent to every
19 registered manufacturer and distributor, including
10:25:58 20 Walgreens, on September 27th, 2006, February 7th, 2007,
21 and December 27th, 2007."

22 Do you see that?

23 A. Yes, sir.

24 Q. Is that referencing the very letters that we talked
10:26:13 25 about yesterday from you?

1 A. Yes, sir. Yes, sir.

2 Q. So Walgreens acknowledges that they didn't meet the
3 standards that you had identified, and how many years had
4 passed between the time you sent those letters?

10:26:32 5 MR. SWANSON: Objection.

6 THE COURT: Overruled.

7 A. From the last letter, six years.

8 BY MR. LANIER:

9 Q. "Furthermore" -- by the way, those are for
10:26:46 10 distribution.

11 Remind us again, distribution is what part
12 of that picture?

13 A. The movement of pharmaceuticals from a distributor
14 to the pharmacy or hospital, or whoever's getting them.

10:26:59 15 Q. From distributor or from manufacturer?

16 A. Well, from the manufacturer to the
17 distribution -- from the manufacturer to distributor,
18 that's distribution.

19 Then from the distributor to the pharmacy,
10:27:09 20 that's also distribution.

21 Q. Oh, got it. Thank you.

22 "Furthermore, Walgreens acknowledges that
23 certain Walgreens retail pharmacies did on some occasions
24 dispense certain controlled substances in a manner not
10:27:22 25 fully consistent with its compliance obligations under

1 the CSA, Section 801 and following, and its implementing
2 regulations under the C.F.R. Part 1300."

3 Can you remind the jury what those are?

4 A. The CSA is the Controlled Substances Act. The
10:27:43 5 federal Controlled Substances Act is the statutes, the
6 statutes, the laws that oversee controlled substances in
7 the United States. And the Regulations, the Code of
8 Federal Regulations is an interpretation of the Act and
9 also a series of regulations that are rules and
10:28:02 10 regulations that the pharmacies, any registrant has to
11 operate under.

12 Q. Now, the terms and conditions of this agreement
13 begin on Page 5, and it starts with the distribution
14 centers, that middle person.

10:28:29 15 Right?

16 A. Yes, sir.

17 Q. It says, "Walgreens will continue to review, and
18 where reasonable and appropriate, to revise its processes
19 and practices for conducting Suspicious Order Monitoring
10:28:48 20 and reporting suspicious orders from Walgreens
21 pharmacies, as set forth in the attached addendum."

22 Can you explain what that is from the DEA's
23 perspective, please?

24 A. This is just -- this is just a -- what we were
10:29:04 25 looking for was that they would look and reevaluate and

1 reconfigure their Suspicious Order Monitoring program.

2 So it's effective, more effective than what
3 it was.

10:29:26

4 Q. All right. And so we remember where we are, we're
5 talking about their work as a distributor here?

6 A. Yes. Yes.

7 Q. And then it stays that, "Walgreens shall inform the
8 DEA of suspicious orders in a format mutually and
9 reasonably agreed upon."

10:29:45

10 Can you explain how that's any different
11 than their obligation under the law to start with?

10:30:02

12 A. No. There's really no difference. It might be in
13 the manner that they're going to transfer the suspicious
14 order to DEA and what office, if they want a specific
15 office to transfer it to, but the obligation is exactly
16 the same.

17 They have to, when discovered, immediately
18 transfer that suspicious order.

10:30:17

19 Q. Okay. In that regard, you've got the next section,
20 which is "Obligations of the pharmacies and CPO
21 facilities."

22 Do you see that?

23 A. Yes, sir.

24 Q. Do you remember what a CPO facility is?

10:30:30

25 A. It's a central fill.

1 Q. Central fill.

2 We haven't heard that concept. What is
3 that?

4 A. A central fill pharmacy, I got to get this right, a
10:30:41 5 central fill pharmacy is a pharmacy that's not
6 necessarily the pharmacy that gets the prescription, but
7 is filling prescriptions for that pharmacy.

8 So it might be in a different pharmacy in a
9 different location, but it is filling prescriptions for
10:30:52 10 the pharmacy that actually received the prescription.

11 Q. All right. So at this point we're further down the
12 line of the closed system.

13 As we look at these, would you explain what
14 the significance was to A, "Walgreens agrees to maintain
10:31:12 15 a compliance program in an effort to detect and prevent
16 diversion of controlled substances as required under the
17 CSA and applicable DEA regulations, as shown in the
18 attached addendum."

19 Do you see that?

10:31:26 20 A. Yes.

21 Q. Can you explain the significance of that, please?

22 A. Well, there are certain things that a central fill
23 pharmacy has to do.

24 There has to be some kind of notation.

10:31:38 25 Now, what we were looking for was a consolidated group of

1 rules and regulations that the registrant would have in
2 place to make sure that if they're using central fill, or
3 whatever their pharmacy is doing, it's in compliance with
4 not only the rules and regulations of the -- of the
5 Controlled Substances Act, but also in compliance with
6 other -- whatever policies and procedures are put in
7 place by the registrant.

8 Q. "This program shall include procedures to identify
9 the common signs associated with the diversion of
10 controlled substances."

11 What's the everyday word that -- phrase
12 that y'all use for these common signs?

13 A. Red flags.

14 Q. Doesn't use the word "Red flag" here, does it?

15 A. No, sir.

16 Q. Is that what's meant by this?

17 A. Yeah.

18 MR. LANIER: Oh, Your Honor, I think this
19 is a good time to stop if we need to.

20 Oh, the monitor is gone.

21 A JUROR: Yeah.

22 THE COURT: That's not good. On all the --

23 THE JURORS: Jurors back row.

24 THE COURT: All right. We'll take our
25 midmorning break, 15 minutes, and we'll get that squared

1 away.

2 Usual admonitions.

3 Thank you.

4 (Jury out.)

10:33:46 5 MR. SWANSON: Sorry, Brian Swanson for
6 Walgreens.

7 And I think this is probably a minor issue,
8 but I want to raise it before the document is displayed.

9 On the next page of this document that
10:33:55 10 Mr. Lanier is going through with the witness, it has the
11 section about the settlement amount that we agreed to
12 pay.

13 And I realize that's not coming in, but the
14 way that it's redacted, rather than redacting the whole
10:34:09 15 paragraph, it redacts the amount.

16 MR. LANIER: I don't even plan on showing
17 that page, Your Honor --

18 MR. SWANSON: Okay.

19 MR. LANIER: -- because it infers an
10:34:15 20 amount, and I think that's outside the bounds of what you
21 said. So my plan right now is not to do that, and I
22 should mention to the Court, I should not be doing the
23 specific facts that are alleged in the addendum.

24 THE COURT: Right.

10:34:24 25 MR. LANIER: I'm just entering into -- I'm

1 walking through the settlement agreement with the terms
2 until we get to that page, but I don't plan on using
3 that.

4 MR. SWANSON: I just didn't want it showed
10:34:34 5 because of --

6 MR. LANIER: That's fair.

7 THE COURT: Okay. Since we took a break,
8 one of the reasons I let Mr. Rannazzisi testify about
9 that DEA presentation, in addition to what I said,
10:34:58 10 it -- the presentation was made to the industry as a
11 whole.

12 It shows -- it put the -- it put the
13 industry, including the defendants, on notice of this
14 overwhelming problem and that there was very likely
10:35:15 15 abuse, diversion, huge numbers of controlled opioids,
16 prescriptions for controlled opioids that were not being
17 prescribed for legitimate medical purposes, and so all
18 pharmacists should have been on notice of that.

19 Also, as we know, the plaintiffs have to
10:35:33 20 prove that each of the defendants was a substantial cause
21 of the opioid problem, and it may very well be that
22 fingers are pointed at the Federal Government as a part
23 of the cause, and I think it's relevant for this witness
24 to testify to what DEA did.

10:35:57 25 So it's also relevant to show what DEA did.

1 Okay.

2 MR. MAJORAS: Your Honor, just because
3 we're going to be on break, as Mr. Lanier pointed out
4 before he had not had that particular conversation with
10:36:09 5 the witness, he of course can't talk to the witness
6 during the break; but I would ask, since the other
7 defendants join in --

8 MR. LANIER: The witness is right here.

9 MR. MAJORAS: And that's why I'm speaking
10:36:20 10 obtusely on the issue, sir, and other rulings.

11 THE COURT: All right. I'll direct
12 Mr. Lanier to have that specific conversation.

13 MR. LANIER: Your Honor, I think it's safe
14 to do it on the record.

10:36:29 15 THE COURT: All right, fine.

16 MR. LANIER: You're not allowed to get into
17 any settlement amount or that money was paid.

18 It's been ruled on by the Court, so don't
19 slip in that somewhere in the questioning.

10:36:39 20 THE COURT: So, sir, you're not going to be
21 asked and I don't want you to include it in any answer.

22 THE WITNESS: Yes, sir.

23 MR. LANIER: Thank you, Judge.

24 (Recess taken.)

10:52:51 25 (Jury in.)

1 THE COURT: All right. Please be seated.

2 And, Mr. Rannazzisi, I want to remind you
3 you're still under oath.

4 So, Mr. Lanier, you may proceed.

10:54:38 5 MR. LANIER: Thank you, Judge.

6 BY MR. LANIER:

7 Q. Mr. Rannazzisi, before the break we were talking
8 about the Walgreens agreement with the DOJ, and we had
9 talked about Walgreens agreed to maintain a compliance
10:54:53 10 program as set forth in the attached addendum.

11 We mentioned that it doesn't say red flag
12 here.

13 Do you remember that?

14 A. Yes, sir.

10:55:03 15 Q. Now, I want to pause for a moment and go to the
16 attached addendum, because the addendum has a section
17 about prospective compliance.

18 And what was your understanding of what
19 y'all meant by prospective compliance?

10:55:40 20 A. Prospective means before the act occurs; not after.

21 Q. In other words, this is what the Walgreens will do
22 into the future?

23 A. Yes, for the duration of the agreement.

24 Q. All right. And in that regard, if you look at
10:56:00 25 number four of what Walgreens agreed to do, it says,

1 "Walgreens remains committed to properly training its
2 pharmacy personnel to deal with evolving
3 diversion-related issues."

4 Do you see where I'm reading?

10:56:16 5 A. Yes.

6 Q. And then it says, "Walgreens will continue to
7 enhance its good faith dispensing policy and training
8 materials to identify red flags of potential diversion
9 for pharmacists to consider in making professional
10 judgments regarding dispensing of controlled substances."

11 Do you see this?

12 A. Yes, sir, I do.

13 Q. Does -- are those -- is -- what do you understand
14 "Red flags" to mean within this context?

10:56:52 15 A. Red flags are the indicators that a pharmacist
16 looks at when he's analyzing the prescription before
17 dispensing to ensure that the prescription's valid and
18 effective, and is not issued for an illegitimate medical
19 purpose in the course of professional practice.

10:57:17 20 Q. And this was used with another witness, but
21 "Beginning in 2014 Walgreens will exclude any accounting
22 for controlled substance prescriptions dispensed by a
23 particular pharmacy from bonus computations for
24 pharmacists and pharmacy technicians at that pharmacy."

10:57:33 25 Did you understand that to be an agreement

1 entered into, as well?

2 A. Yes, sir. Um-hmm.

3 Q. If we go back to the agreement itself where we're
4 looking at obligations of Walgreens pharmacies,

10:58:05 5 "Walgreens shall direct and train its pharmacists that
6 their corresponding responsibility under federal law
7 requires them not to fill a prescription that such
8 pharmacist knows or has reason to know was issued for
9 other than a legitimate medical purpose or by a
10:58:25 10 practitioner acting outside the usual course of
11 professional practice."

12 Sir, why did the DEA take this action to
13 put that into writing here, based upon your
14 understanding?

10:58:39 15 A. Because we wanted the corporation to understand
16 that it's their obligation to make sure those pharmacists
17 know what their corresponding responsibility is.

18 They could touch, reach their pharmacists a
19 lot easier than DEA can, when I was there at DEA anyway,
10:58:55 20 and that's why it's in there.

21 Q. All right. Sir, with that, we'll set aside -- by
22 the way, on all of these, are you making these agreements
23 with simply individual pharmacists, or with individual
24 stores, or with whom?

10:59:21 25 A. These agreements are made with the corporation,

1 whoever the corporation is that oversees the stores.

2 Q. So if we think of it like an octopus with all of
3 the different stores being a part of it, where did you
4 make this agreement and which stores would it apply to?

10:59:45 5 A. Well, the agreement would be the head of the
6 octopus, and we would expect that the enforcement of the
7 agreement would happen at the tentacle level of the
8 octopus, the stores.

9 Q. All right. Then the last set that I want to talk
11:00:10 10 to you about is CVS.

11 No, we just did -- we did CVS. Let's make
12 sure we've got everybody.

13 Walgreens, Walmart, *Holiday*.

14 You did not do anything on Giant Eagle
11:00:27 15 during your tenure there, is that fair?

16 A. That's correct, sir.

17 Q. All right. We need to add that to the record as
18 well.

19 MR. LANIER: Your Honor, at this point in
11:00:35 20 time I will pass the witness.

21 THE COURT: Okay. Who would like to begin?

22 Mr. Majoras for Walmart.

23 MR. MAJORAS: Thank you, Your Honor. If I
24 could just have a few moments to get together.

11:00:53 25 THE COURT: Yes.

1 MR. LANIER: Oh, Your Honor, a bit of
2 housekeeping. Do I need to mark and -- oh, we can do
3 that later.

4 I've got the run-out of what I showed on
11:01:03 5 the screen, if anybody needs it.

6 MR. MAJORAS: May I proceed, Your Honor?

7 THE COURT: Yes, you may, Mr. Majoras.

8 CROSS-EXAMINATION OF JOSEPH RANNAZZISI

9 BY MR. MAJORAS:

11:02:17 10 Q. Good morning, folks. Good morning, Mr. Rannazzisi.

11 A. Good morning, sir.

12 Q. You and I have not met before, but I am John
13 Majoras, I'm one of the lawyers for Walmart. And you
14 also may not be aware that we have experienced occasional
11:02:29 15 problems with our sound system during the trial, so if at
16 any point I can clarify or speak louder or softer, please
17 let me know and I'd be happy to do that.

18 A. Yes, sir.

19 Q. Mr. Rannazzisi, at the beginning of your testimony
11:02:44 20 yesterday, you noted the fact that you are now retired
21 from the DEA, correct?

22 A. That is correct. Yes, sir.

23 Q. You were the head of the Office of Diversion and
24 Control for about 10 years?

11:02:55 25 A. From 2005 to 2015, yes.

1 Q. And Mr. Lanier covered with you some of your
2 obligations you have about not testifying about internal
3 matters at the DEA from your time there.

4 Do you recall that?

11:03:10 5 A. Yes, sir.

6 Q. And I'm going to ask you in responding to my
7 questions, you respond with the same level regarding your
8 experience and your knowledge about DEA that you did with
9 Mr. Lanier, and I'm going to ask my questions in that
10 same format.

11 Do you understand?

12 A. Yes, sir.

13 Q. Thank you.

14 And speaking of testimony, you've testified
11:03:29 15 a number of times in opioid litigation already, correct?

16 A. In depositions and trial, yes.

17 Q. In fact, there's a trial in West Virginia against
18 some of the distributors not in this case, and you were
19 on the stand for about three or four days; is that right?

11:03:45 20 A. That is correct.

21 Q. And you are not testifying in this case on behalf
22 of the DEA?

23 A. No, sir, I'm not.

24 Q. You're not here -- there was a question earlier
11:03:58 25 about being a mouthpiece.

1 You're not a mouthpiece to give the DEA's
2 view of anything in this case, are you?

3 A. No, sir.

4 I believe I'm here to talk about what
11:04:10 5 happened at DEA during my tenure at DEA.

6 Q. So along that line, you cannot offer any firsthand
7 information in terms of what happened in terms of the
8 DEA's law enforcement role dealing with opioids since you
9 left in 2015?

11:04:28 10 A. Well, yes. I'm no longer employed by DEA, and I no
11 longer are a supervisor at DEA, so I can't discuss what
12 happens after 2015.

13 Q. Sir, I'd like to talk about some subjects that
14 you've already covered with Mr. Lanier, and if I jump
11:04:44 15 around a bit and I lose you, just let me know, and I'll
16 be happy to, you know, try and situate us a little
17 better.

18 A. Sure.

19 Q. The DEA is the federal agency charged with
11:04:53 20 overseeing the entire closed system that you talked about
21 earlier, correct?

22 A. That is correct, yes.

23 Q. And the DEA is there to oversee how the system
24 works?

11:05:05 25 A. Yes, sir.

1 Q. The DEA is the one that decides whether to allow
2 people to be part of the closed system through the
3 registration process, right?

4 A. With -- with the state, yes.

11:05:20 5 The DEA can't register anyone without the
6 state authorizing the registration.

7 Q. But likewise, someone cannot be participating in
8 the closed system without DEA registration?

9 A. That is correct.

11:05:33 10 Q. Now, anyone who handles controlled substances
11 within that system, except for nurses and pharmacists,
12 has to be registered with the DEA, right?

13 A. That is correct. Yes.

14 Q. Well --

11:05:56 15 A. It is. There's an exception for common carriers,
16 but other than that, yes.

17 Q. And common carriers are the companies that operate
18 trucks and trains that may deliver --

19 A. Yes.

11:06:05 20 Q. -- opioid products.

21 And pharmacists have to be affiliated with
22 a pharmacy that is registered with the DEA?

23 A. Yes, sir. That has to be their practice location.
24 If they don't have a pharmacy, they can't practice -- or
11:06:20 25 a pharmacy or hospital, so --

1 Q. So the pharmacist's ability to participate in this
2 system is through the pharmacy or the hospital in which
3 he or she works as a pharmacist?

4 A. That is correct.

11:06:32 5 Q. And the DEA registers any prescriber who is able to
6 prescribe opioid medication?

7 A. The DEA registers practitioners based on the state
8 authorization, but, yes, that's -- that's correct.

9 Q. So like your earlier answer, without DEA
11:06:57 10 authorization, a prescriber cannot write an opioid
11 prescription?

12 A. Without a DEA registration, that's correct, they
13 cannot.

14 Oh, well, there's an exception to that.

11:07:12 15 If you're working under a -- if you're a
16 prescriber or doctor working under a hospital
17 registration, you can prescribe. You don't have a
18 registration, but you're using the hospital's
19 registration to prescribe.

11:07:23 20 So if you're, like a hospitalist or a
21 visiting doctor, or an intern or a resident, you could
22 use the hospital's registration to prescribe.

23 Q. So it's possible that a prescription can have
24 multiple prescribers using that DEA registration?

11:07:39 25 A. Yes, but if I remember the way it works correctly,

1 there's got to be the registration plus a designator for
2 that particular prescriber.

3 Q. And the reason for this registration process is
4 that the Federal Government wants to ensure that
11:07:59 5 controlled substances are being handled appropriately,
6 right?

7 A. Yes. Securely and appropriately.

8 Q. And distributors need to renew their DEA
9 registration every year?

11:08:08 10 A. Yes, they do.

11 Q. Prescribers have to renew theirs every three years?

12 A. When I was at DEA, it was three years.

13 I don't know if that's changed.

14 Q. Same is true for pharmacies when you were there?

11:08:18 15 A. Three years, yes, sir.

16 Q. Three years.

17 DEA doesn't issue permanent or lifetime
18 registrations?

19 A. No, sir, they don't.

11:08:26 20 Q. And that's because DEA wants to ensure periodically
21 that nothing had changed that would disqualify that
22 person or entity from having a registration, right?

23 A. That is correct.

24 Q. Now, to your knowledge, in terms of the DEA, DEA's
11:08:44 25 never suspended nor revoked any Walmart Distribution

1 Center registration, has it?

2 A. During my tenure at DEA, no. Not that I'm aware
3 of.

11:09:01

4 Q. DEA has never delayed or denied a Walmart
5 Distribution Center registration renewal, has it?

6 A. Again, during my tenure at DEA, no.

7 Q. And the same is true for the other pharmacy
8 defendants in this case, Walgreens, CVS, and Giant Eagle,
9 with respect to -- I'm sorry, let me start over again.

11:09:19

10 Let me get you into the two counties that
11 we're talking about in Ohio.

12 You understand that to be Lake and Trumbull
13 County, correct?

14 A. Yes, sir.

11:09:29

15 Q. Have you been there before?

16 A. I'm sorry?

17 Q. Have you been to either of those counties before?

18 A. I -- "Have you," and I didn't hear.

11:09:40

19 Q. I'm sorry, the Court Reporter is laughing because
20 she tells me to slow down all the time, and now I'm
21 proving it, so let me try it again.

22 Have you ever been to either Lake or
23 Trumbull County?

24 A. Yes.

11:09:50

25 Q. Okay. But within Lake or Trumbull County, the DEA

1 has never suspended or revoked the registration of any
2 Walmart Pharmacy, is that right?

3 A. Not that -- not during my tenure that I'm aware of,
4 no.

11:10:07 5 Q. And likewise, with the other defendants in this
6 case, Giant Eagle, CVS and Walgreens, you're not aware of
7 any pharmacy of those companies being -- having a
8 registration revoked in either of those counties?

9 A. No. Not that I'm aware of during my tenure.

11:10:27 10 Q. And you're not aware that the DEA has ever delayed
11 or denied the registration renewal for any Walmart
12 Pharmacy in either Lake or Trumbull County, right?

13 A. No. Again, not during my tenure, I don't know.

14 Q. So you talked a bit about distribution, and you're
11:10:51 15 aware that at least some of the defendants in this case
16 at times distributed to their own pharmacies, correct?

17 A. Yes, sir.

18 Q. Are you aware during that time with respect to
19 Walmart, by being a self-distributor, it means that
11:11:08 20 Walmart is only distributing within those two counties to
21 the five DEA-registered pharmacies it has in those
22 counties?

23 A. Yes. As a self-distributor, you only distribute to
24 your stores, that's your corporate structure.

11:11:22 25 Q. And you're not aware that DEA ever warning Walmart

1 that it should not distribute controlled substances to
2 one of those five Walmart Pharmacies in Trumbull or Lake
3 County?

11:11:38

4 A. During my tenure, no, I'm not aware of any
5 notification like that.

6 Q. Would you agree that the DEA has a mission to
7 ensure an adequate and uninterrupted supply of controlled
8 substances?

9 A. Yes, sir.

11:11:53

10 Q. And you agree that it's vital that an adequate and
11 uninterrupted supply of pharmaceutical controlled
12 substances be available for effective patient care,
13 correct?

14 A. Yes, sir.

11:12:07

15 Q. In fact, it's a public health concern when
16 pharmacists cannot dispense legitimate controlled
17 substance medication to patients, right?

18 A. "Legitimate," yes.

11:12:25

19 Q. Would you agree that drug shortages can adversely
20 affect the public health?

21 A. Absolutely.

22 Q. Would you also agree that distributors play an
23 important role in ensuring an adequate and uninterrupted
24 supply of prescription opioids?

11:12:37

25 A. Yes.

1 Q. And you've already discussed with us the
2 distribution role about moving the prescription
3 medications downstream to ensure that pharmacies and
4 hospitals have the prescription medications they need,
11:12:52 5 correct?

6 A. That is correct. Yes.

7 Q. And that's important, because if a patient doesn't
8 get the medication he or she needs, there's a breakdown
9 in the system, right?

11:13:01 10 A. That's correct.

11 Q. In fact, it's critical for patients with legitimate
12 medical needs to have access to their prescription opioid
13 medications?

14 A. Yes. Legitimate patients, absolutely.

11:13:14 15 Q. Going back to the DEA registration, would you agree
16 that DEA-registered pharmaceutical manufacturers are the
17 ones responsible for studying the safety and
18 effectiveness of prescription opioids and other
19 medications that they make?

11:13:45 20 A. For medications that they -- they manufacture and
21 market, absolutely, yes.

22 Q. And manufacturers are the ones that actually obtain
23 the Food & Drug Administration approval for new
24 prescription opioids, right?

11:14:01 25 A. Yes. They do the new drug application, the NDA,

1 and shepherd it through the process, absolutely.

2 Q. And at the DEA, in looking at what the DEA does
3 versus the FDA, Food & Drug Administration, at the DEA
4 you recognize that when the FDA approves an opioid
11:14:19 5 prescription, the FDA has determined that the benefits
6 outweigh the risks, right?

7 A. The FDA doesn't approve prescriptions.

8 If you're talking about the drug, yes.

9 Q. Yes, sir.

11:14:30 10 A. The drug, yes.

11 Q. Thank you for that clarification.

12 A. Yes.

13 Q. Okay. So just so everyone is clear on this, and I
14 didn't mean to misspeak, the FDA approves the drug, and
11:14:43 15 in doing that it determines that the benefits outweigh
16 the risks, right?

17 A. That is correct.

18 Q. You recognize that Walmart is not a manufacturer of
19 any of the opioid medication in this case, is that right?

11:15:02 20 A. To the best of my knowledge, during my tenure, no,
21 they were not.

22 Q. And none of the other defendants, Giant Eagle,
23 Walgreens or CVS, were manufacturers of opioid
24 medication, were they?

11:15:19 25 A. To the best of my knowledge, no, they were not

1 manufacturers.

2 Q. And -- I apologize, I brought some water up myself.

3 If you need some, by all means, please.

4 A. I've got it.

11:15:34 5 Q. And in your testimony today, you have no evidence
6 or you're offering no evidence that Walmart distributed
7 prescription opioid medications in Lake or Trumbull
8 Counties that were not approved by the FDA, are you?

9 A. No, sir.

11:15:47 10 Q. And that's true with the other defendants as well?

11 A. That is correct. Yes.

12 Q. I want to change subjects a little bit.

13 This is a topic you talked about in terms
14 of quotas. Just let me ask a few questions, if I could,
11:16:05 15 about that.

16 From your experience, you would agree that
17 when it comes to the supply of prescription opioids,
18 supply does not drive demand, correct?

19 A. Supply does not drive demand, yes, I could agree to
11:16:22 20 that.

21 Q. And I believe you testified to the effect that
22 demand comes from things like prescribing hospitals,
23 research and development, and exports, correct?

24 A. Are we talking about demand as -- for the -- for
11:16:35 25 the basic class aggregate production quota, or are we

1 talking specifically down the road?

2 Q. Let's talk about the aggregate production quota.

3 A. Okay. For the aggregate production quota there's
4 several things.

11:16:49 5 Demand, loosely defined, prescriptions or
6 hospital use, yeah, but there's other things in demand
7 besides that that are generally never discussed.

8 Q. So let's move, as you suggested, there's further
9 down the stream the demand by -- relating specifically to
11:17:08 10 prescriptions.

11 You would agree that demand for
12 prescriptions is driven by patient care and patient
13 needs; not by supply?

14 A. The demand for prescriptions has many facets.
11:17:25 15 Patient care is one of them, but there's also
16 prescriptions that are -- that are illegal, illegitimate,
17 that have nothing to do with patient care.

18 Q. Well, with respect to the illegitimate
19 prescriptions, is it your testimony that illegal
11:17:43 20 prescriptions, the demand for those are driven by the
21 supply?

22 A. No.

23 Illegal prescriptions, like legitimate
24 prescriptions, are -- are basically handed off from a
11:17:58 25 prescriber. It has nothing to do with supply. It has

1 something to do with whether they are prescribing legally
2 or illegally.

3 Q. So just because there is a supply, availability of
4 prescription opioids, doesn't mean that supply has to be
11:18:12 5 used, right?

6 A. That is correct.

7 MR. LANIER: Your Honor, I do want to note
8 for the record an objection that if he's going to be
9 asking opinion testimony like this, that I be allowed to
11:18:24 10 redirect on these issues of opinion testimony that are
11 based on his DEA tasks.

12 THE COURT: I agree. So if the door is
13 open, you can direct on it.

14 MR. LANIER: Thank you, Judge.

11:18:36 15 BY MR. MAJORAS:

16 Q. Sir, just to make this point, I'll make sure to you
17 that I'm asking about information within your knowledge
18 at the DEA in your answers.

19 If you don't have that, please tell me.

11:18:45 20 A. Yes, sir.

21 Q. So turning to specifically the quotas with respect
22 to controlled substances, the DEA sets the quotas for
23 controlled substances each year, correct?

24 A. Yes, sir.

11:19:00 25 Q. That includes opioids, right?

1 A. Yes, sir.

2 Q. And you personally, while you were at the DEA,
3 oversaw the DEA group that managed the aggregate
4 production quota, is that right?

11:19:12 5 A. That is correct.

6 Q. And I'm going to try to keep using the full term of
7 that, but you use abbreviation APQ?

8 A. Yes, sir.

9 Q. And so APQ is the aggregate production quota,
11:19:24 10 that's the quota that the DEA sets, correct?

11 A. Yes, sir.

12 Q. And the DEA's opioid quotas were based on the
13 estimated medical, scientific research, and industrial
14 needs of the United States, correct?

11:19:37 15 A. Yes, sir. It's 826.

16 Q. "Prescription opioid levels are based on the
17 presumption that there is a legitimate" -- I'm sorry, let
18 me start again.

19 I'll do it in English this time, I hope.

11:19:55 20 "Prescription opioid levels are based on
21 the presumption that there are legitimate medical needs,"
22 right?

23 A. Yes, sir.

24 Q. "And the quotas that the DEA sets were designed to
11:20:07 25 set an estimated amount that would meet the legitimate

1 medical demands without providing excess medications that
2 may be diverted into the illicit market," correct?

3 A. Yes. That's somewhat correct, yes.

4 Q. You would agree that a controlled substance
11:20:35 5 prescription issued for legitimate medical purpose by a
6 registered doctor in the usual course of his or her
7 profession is not a diversion, right?

8 A. If it's issued under the *Moore* guidelines, for
9 legitimate medical purpose in the usual course, yes.

11:20:57 10 Q. I'd like to take a look at some of the quotas over
11 time, so I'm going to ask -- you should have this in the
12 binder in front of you, but I'll put it up on the
13 screen -- that Defendants' MDL 01487 be presented to you.
14 I'll let you find that.

11:21:51 15 A. Did you say 01487?

16 Q. 01487?

17 A. I've got it.

18 Q. And you could do it whatever way works best for
19 you. You can look at the paper document in front of you
11:22:03 20 or the one we'll put on the screen. Sometimes the screen
21 can help you focus.

22 But let me ask you, first, what you see as
23 Defendants' MDL 01487 is the aggregate production quota
24 history for selected substances, is that right?

11:22:19 25 A. That is correct.

1 Q. If you could just say that, your answer again, so
2 we make sure we have that?

3 A. That is correct.

4 Q. Thank you.

11:22:30 5 This is the type of information you were
6 familiar with when you were at the DEA, right?

7 A. Yes, sir.

8 Q. And in fact, the years on this particular chart are
9 the years that coincide with your role as the head of the
11:22:43 10 Office of Diversion, right?

11 A. Yes, sir.

12 Q. So just across the top, that's the 2005 through
13 2015?

14 A. Yes, sir.

11:22:50 15 Q. And the amounts here are expressed in kilogram
16 amounts, correct?

17 A. Yes, sir.

18 Q. So these, for example, aren't individual tablets or
19 anything of that nature?

11:23:01 20 A. It's bulk powder.

21 Q. Bulk powder?

22 A. Yeah, bulk powder, for the most part.

23 Q. And that's the powder that's used to make the
24 medication that eventually would get prescribed to an
11:23:13 25 individual?

1 A. Yes.

2 Q. In your view -- I'm sorry, in your experience
3 during this time period, you would agree that the
4 increases in the volume of the annual DEA quotas were
11:23:27 5 driven by legitimate medical needs, correct?

6 A. In part, yes.

7 Q. When you set the quotas, did you take diversion
8 into account?

9 A. We looked at diversion, yes.

11:23:50 10 Q. So when you were setting the quota, you were
11 building in the fact that you understood that there was
12 going to be some diversion, correct?

13 A. Of course we knew there was diversion. We didn't
14 set the quota based on the diversion, though.

11:24:06 15 Q. But you wanted to make sure that there was adequate
16 supply for legitimate needs of opioids when you were
17 setting the quotas, even in light of diversion?

18 A. That is correct. Yes.

19 Q. So let's look at Exhibit MDL 01487 a little more
11:24:32 20 closely.

21 And if we look in particular at the line
22 for Oxycodone, which will be highlighted on your screen
23 but also is in front of you --

24 MR. MAJORAS: Mr. Ferry, can we make that
11:24:56 25 any larger, or is that what I've got?

1 Thank you.

2 BY MR. MAJORAS:

3 Q. So do you see where Oxycodone appears in the
4 aggregate production quota chart history?

11:25:10 5 A. Yes, sir.

6 Q. And if we look at that line in particular, this
7 shows a steady increase by thousands of kilograms every
8 year from 2005 through 2013, the short drop in 2011?

9 A. Yes, sir. That's correct.

11:25:26 10 Q. And even when it begins to decrease in 2014 and
11 2015, the quota is still nearly three times as large as
12 the quota had been in 2005, right?

13 A. Yes, sir. There are reasons for that.

14 Q. I'm sure there are.

11:25:45 15 My question, though, quite simply is, are
16 these the quotas that were approved by the DEA during the
17 time period that you were in your role in the Office of
18 Diversion?

19 A. Yes, sir.

11:25:56 20 Q. Switching topics again.

21 MR. MAJORAS: You can take that down,
22 Mr. Ferry. Thank you.

23 Q. Would you agree that Internet pharmacies gained
24 prominence in the early 2000s?

11:26:14 25 A. Yes, sir. Absolutely.

1 Q. And you talked a little earlier about Internet
2 pharmacies?

3 A. Yes, sir.

11:26:27

4 Q. In 2008, you're aware that Congress passed the Ryan
5 Haight Act, which effectively shut down most Internet
6 pharmacies, right?

7 A. That is correct.

8 Q. That's an action that Congress itself took?

9 A. Yes.

11:26:37

10 Well, shut down the brick and mortar
11 pharmacies that were facilitating Internet drug sales.

12 The Internet pharmacies were still out
13 there.

11:26:49

14 Q. So Internet pharmacies were still available for
15 someone to obtain prescriptions even after that
16 Congressional Act?

17 A. Right. It just shut down the brick and mortar
18 pharmacies that were operating, facilitating drug sales
19 over those Internet websites, but there were still
20 Internet websites out there.

11:27:03

21 Q. And until those brick and mortar pharmacies were
22 shut down, they had been registered by the DEA, correct?

23 A. They were -- yes. They had to be, yes.

24 Q. Are you familiar with the term "Rogue" pharmacies?

11:27:21

25 A. Yes.

1 Q. Those would be pharmacies acting outside of what
2 you would understand to be the appropriate dispensing of
3 medication?

4 A. Yes. They'd be operating outside of the law.

11:27:35 5 Q. You would agree that with respect to the brick and
6 mortar stores that you just described for me, that were
7 ultimately shut down, they were primarily independent
8 pharmacies, right?

9 A. As I testified previously, the vast majority were
11:27:54 10 independent pharmacies.

11 Q. You're not aware of any shipments from Walmart to
12 an Internet pharmacy, are you?

13 A. Shipments as a Walmart distributor to an Internet
14 pharmacy?

11:28:08 15 Q. Yes, sir.

16 A. I -- I can't say that because, again, in 2009
17 Walmart -- a Walmart Pharmacy was issued an order to show
18 cause for illegally -- for dispensing medication through
19 an Internet source.

11:28:39 20 So unless that Walmart Pharmacy was getting
21 the medication they were obtaining, getting their
22 medication that they dispensed from a source outside of
23 Walmart, which I don't believe you guys would allow,
24 then, no, I can't say that you're correct.

11:28:56 25 Q. Was that in Trumbull or Lake County?

1 A. You didn't ask me, but no, it was not, yeah.

2 Q. Was that the agreement you described, you discussed
3 earlier?

4 A. Yeah, in the San Diego Walmart Pharmacy.

11:29:09 5 Q. But you're not aware of Walmart ever operating a
6 pain clinic, are you?

7 A. No, sir, I'm not.

8 Q. The same is true for the other defendants, you're
9 not aware that either Giant Eagle, CVS, or Walgreens,
11:29:23 10 ever operated a pain clinic?

11 A. Not that I'm aware of, no.

12 Q. If we focus again on Lake and Trumbull Counties,
13 it's true that you have no information that any Walmart
14 pharmacist ever knowingly filled a prescription for a
11:29:45 15 pill-mill in either county, is that correct?

16 A. No, I have never looked at any prescriptions
17 related to Lake or Trumbull County Walmart stores, no.

18 Q. I -- I'm sorry, I didn't mean to interrupt. Didn't
19 mean to do that either.

11:30:01 20 You would agree that you did not do that
21 type of look in Trumbull or Lake County for the other
22 defendants either, did you?

23 A. Again, I've not reviewed any of the prescriptions
24 for any of the defendants in Lake and Trumbull County.

11:30:15 25 Q. I'd like to turn now to some of the tools that you

1 have had -- you had available to you at the DEA when you
2 were there.

3 While you were head of the DEA's Office --
4 why don't we restrict it to the last year, 2015, before
11:30:29 5 you retired. While you were head of the DEA's Office of
6 Diversion, you oversaw approximately 300 personnel?

7 A. Probably a little more than that, yes.

8 Q. And under your tenure, the Office of Diversion
9 Control had an annual budget of nearly \$350 million,
11:30:49 10 right?

11 A. It varied between 350 and 405 million.

12 Q. And even beyond the potentially 300 personnel
13 within your division, there were nearly a thousand field
14 personnel to whom you provided, to whom the DEA provided
11:31:09 15 strategic direction, correct?

16 A. Probably about 1,200, but, yeah, right around that.

17 Q. What is the tactical diversion squad?

18 A. Tactical Diversion Squad is a group of Special
19 Agents, diversion investigators, and state and local
11:31:22 20 officers that work together specifically targeting
21 diversion; doctors, pharmacies, nurses, large
22 organizations that are conducting -- that are
23 participating in prescription fraud, things like that,
24 any method of diversion.

11:31:39 25 Q. And by the time you left the DEA in 2015, you had

1 approximately 66 Tactical Diversion Squads available to
2 you, right?

3 A. Yeah, that's -- that's correct.

11:32:00

4 Q. You testified earlier that you have provided
5 testimony to Congress at times, correct?

6 A. Yes, sir.

7 Q. I'd like to ask you in particular about some
8 testimony, and you can find it on Defendants' MDL 01502
9 in your binder.

11:32:35

10 A. Yes, sir.

11 Q. I apologize, this -- this is a very poorly
12 photocopied, if I will, exhibit.

13 Why don't we -- let's put that aside and
14 cover that a bit later. Let me see if I can find
15 something better.

11:32:58

16 Switching, switching topics again a bit,
17 sir, when you were at the DEA, the DEA's position was
18 that the responsibility for monitoring and preventing
19 controlled substance abuse was shared by state and
20 federal governments, right?

11:33:23

21 A. We all had regulatory and enforcement authority at
22 the federal level, state and local agencies, yes.

23 Q. And you've already, in some of your answers to me
24 today, pointed that out, that there were times where a
25 state had specific roles, correct?

11:33:35

1 A. Yes.

2 Q. While you were at the DEA, the DEA itself affirmed
3 the fact that it would never want a patient to go without
4 pain relief.

11:33:47 5 True?

6 A. We -- we have said different manners, but we've
7 always said that a legitimate patient should not be
8 denied medication because of supply issues.

9 Q. And one of your goals was, of course, preventing
11:34:04 10 the abuse of pain medications?

11 A. That is correct.

12 Q. But you balance that goal with the policy of
13 promoting pain relief and the fact that you believed
14 patients should get the appropriate medical care to
11:34:15 15 relieve their pain.

16 Is that fair?

17 A. Yes, depending on the patient class, absolutely.

18 Yes.

19 Q. And you -- you would agree that the DEA emphasized
11:34:29 20 its view that physicians who are engaged in legitimate
21 pain treatment should not be discouraged from providing
22 proper medications to patients as medically justified,
23 correct?

24 A. Where -- where did that -- where was that from, if
11:34:46 25 you don't mind me asking?

1 Q. Well, actually what I could do is I could refer you
2 to your testimony in another case, if that would be
3 helpful.

4 A. Sure.

11:34:54 5 Q. If you, in your binder, and I'll just ask you to do
6 this before putting it up on the screen, this is from
7 your West Virginia trial testimony that I mentioned
8 earlier.

9 A. Okay.

11:35:05 10 Q. The date on this one is June 9th, 2021, to find the
11 transcript.

12 A. Okay.

13 Q. And in particular, I'm going to ask you to go to
14 Page 125, and why don't you read to yourself Lines 1
11:35:16 15 through 16?

16 (Pause.)

17 A. I'm sorry, which volume is that?

18 Q. This would be in -- I think it's done by date, June
19 9th, 2021.

11:35:44 20 A. Okay. Got it.

21 And what page was that?

22 Q. 125.

23 (Pause.)

24 A. Okay. I've read it.

11:36:23 25 Q. And, sir, my question: Simply having read that,

1 does that refresh your recollection as to whether the DEA
2 emphasized its view that physicians who are engaged in
3 legitimate pain treatment should not be discouraged from
4 providing proper medications to patients as medically
11:36:40 5 justified?

6 A. Again, emphasizing "legitimate pain treatment,"
7 yes.

8 Q. I'm trying to jump ahead to things that aren't
9 already covered, sir. Hopefully that will get you out of
11:37:09 10 here sooner.

11 Are you familiar with the changes in the
12 rules regarding 90-day supply of opioids while you were
13 at the DEA?

14 A. Yes, sir.

11:37:31 15 Q. And that issue is that the DEA wanted to ensure
16 that patients received the medical care they needed for
17 pain relief, and took steps on your watch to make it
18 easier for doctors to prescribe opioids for longer
19 periods of time without seeing the patients in between.

11:37:50 20 Correct?

21 A. Yes. But that was not just for opioids.

22 And, in fact, the reason that was done was
23 for a particular class of drugs. The opioids were
24 included, but we started looking at that for ADHD
11:38:06 25 medication, for students that were out of state at the

1 time and couldn't come back to get their medication every
2 month.

3 Q. So when the rule change was made, though, and we'll
4 talk about the rule change, it covered opioid medication,
11:38:19 5 correct?

6 A. Yes, it did.

7 Q. Controlled substance category Class II?

8 A. Yes, sir, it did.

9 Q. And during -- during your tenure the DEA amended
11:38:31 10 its regulations to allow practitioners to provide

11 individual patients with multiple prescriptions to be
12 filled sequentially for those products, correct?

13 A. That was the same -- that was the same regulation.

14 Q. So in simple terms, what the Government did was
11:38:47 15 allow a patient to see a doctor one time and get
16 back-to-back-to-back, so 30-day supplies of prescriptions
17 to cover them for up to 90 days total, without having to
18 see the doctor in between?

19 A. That -- that is, again, correct, but there were
11:39:07 20 things built into that, including corresponding
21 responsibility and do-not-fill dates.

22 So they couldn't get just an unreasonable
23 amount of drug, and that also stopped doctors from
24 writing large quantities of medication to last a certain
11:39:26 25 amount of time.

1 Q. Okay. So let's break that down a little bit.

2 In the refusal-to-fill date in particular,
3 so a doctor, under the new regulation, was allowed to
4 write a prescription, three prescriptions for opioids,
11:39:41 5 30-day supplies; correct?

6 A. Dated on the date he wrote, but he'd write three
7 prescriptions with a "Do not fill until" date on the face
8 of the prescription.

9 Q. Okay. And I'm probably going to embarrass myself
11:39:54 10 with my calendar math, but that would mean if I went to a
11 doctor today who had decided it was an appropriate
12 treatment to have me on pain medication for 90 days, the
13 doctor today could write three separate prescriptions
14 but, for example, on the second one he would write "Don't
11:40:12 15 fill until November 14th," and then the third
16 prescription would say, "Don't fill until December 14th,"
17 if my math is roughly correct, for 30 days?

18 A. That is correct.

19 Q. And you supported that rule, didn't you?

11:40:29 20 A. I did support that rule.

21 It was specifically for chronically ill
22 patients and patients who were on ADHD medication that
23 were out of state and couldn't get back to see their
24 doctors every month.

11:40:47 25 Q. But the rule applied to the medication itself,

1 right? It didn't require someone to check to see if it
2 was a student or if someone had chronic pain, did it?

3 A. The rule applied to the medication, yes, the
4 Schedule II medications.

11:40:59 5 Q. And you would agree that that rule change came at a
6 time when the DEA was struggling with Internet pharmacies
7 and rogue pain clinics, correct?

8 A. Yes, sir.

9 Q. Speaking -- speaking of pain clinics, the DEA never
11:41:16 10 adopted a rule or a practice where it refused to register
11 doctors if they were in pain clinics, did it?

12 A. The DEA, when -- during my tenure at the DEA, we
13 looked at what the state was doing as far as the doctor
14 registration, medication -- the controlled substance
11:41:43 15 registration, as well as his medical license before we
16 issued.

17 We didn't necessarily look at where he was
18 practicing.

19 Q. So in terms of my question, though, the DEA itself
11:41:54 20 never adopted a rule or practice where it refused to
21 register doctors if they worked at pain clinics, did it?

22 A. No.

23 Q. Because there are pain clinics out there that are
24 actually not rogue clinics, right?

11:42:07 25 A. That is correct. Yes, sir.

1 Q. When the DEA is investigating a doctor, it does not
2 share that information publicly, does it?

3 A. No, it does not.

11:42:31

4 Q. It wants to conclude its investigation without
5 knowledge being out in public, correct?

6 A. That, and there's due process issues.

7 Q. And the same with pharmacies: If the DEA is
8 investigating a pharmacy, it doesn't share that publicly,
9 does it?

11:42:42

10 A. No, sir, it does not.

11 Q. So if a pharmacy or a pharmacist were to ask one of
12 your agents during the time you were in your role at the
13 DEA, "Should we be worried about this particular doctor
14 we are seeing prescriptions from," and you were
15 conducting an investigation of that doctor, you would not
16 be able to disclose the fact that investigation was
17 underway.

11:42:58

18 Right?

19 A. No, because that would be a due process violation.

11:43:24

20 Q. And likewise, if the DEA was in the process of
21 investigating a doctor who was registered with the DEA,
22 the DEA will not tell pharmacies whether or not they
23 should fill prescriptions from that particular doctor,
24 right?

11:43:40

25 A. Again, that's -- that would be a due process

1 violation, the fact of action by the Government.

2 No, we wouldn't do that.

3 Q. You talked before about administrative actions that
4 the DEA could take.

11:44:05 5 During your tenure as the DEA Office of
6 Diversion Control -- I'm sorry. During your tenure, the
7 DEA Office of Diversion and Control delayed filing
8 administrative actions such as immediate suspension
9 orders while a criminal investigation was ongoing, right?

11:44:23 10 A. That information is privileged, and I would not be
11 allowed under *Touhy* to answer any of those questions.

12 MR. MAJORAS: Your Honor, I'm afraid I need
13 to go to the headset, please.

14 THE COURT: Okay.

11:45:03 15 (Proceedings at side-bar:)

16 MR. MAJORAS: Your Honor, during
17 Mr. Rannazzisi's deposition in Track One, that question
18 was asked of Mr. Rannazzisi. Mr. Bennett, the DOJ's
19 lawyer, authorized him to answer the question only "Yes
11:45:16 20 or no." He did, in fact, answer that question.

21 And I'm happy to restrict the answer simply
22 to "Yes or no."

23 THE COURT: All right. I think you can't
24 act -- answer -- I think he thought the answer was to
11:45:27 25 some specific investigation.

1 You can say, you know, "During your tenure
2 was there ever a situation where the DEA delayed filing a
3 civil or administrative action pending the resolution of
4 a criminal investigation?"

11:45:42 5 And I assume he can answer that "Yes or
6 no."

7 MR. MAJORAS: Thank you.

8 MR. LANIER: Your Honor, one of the
9 objections that I would have in this regard is that --
11:45:57 10 Mr. Majoras, please -- since the witness believes that he
11 has a *Touhy* issue, that Mr. Majoras let the witness know
12 he will limit the question to a yes or no.

13 THE COURT: Okay.

14 MR. MAJORAS: Happy to do that.

11:46:08 15 THE COURT: Okay. Thank you.

16 (End of side-bar conference.)

17 BY MR. MAJORAS:

18 Q. So, Mr. Rannazzisi, just let me know when you're
19 ready.

11:46:36 20 A. I'm ready.

21 Q. The question I'm going to ask you, I'm only asking
22 for a yes or no.

23 I am not asking about any specific
24 investigation. Okay?

11:46:47 25 So do you understand that's my parameters

1 on my question?

2 A. Okay.

3 Q. And I ask you specifically only to answer yes or
4 no.

11:46:54 5 Do you understand?

6 A. Okay.

7 Q. So during your tenure, were there
8 situations -- were there any situations in which the DEA
9 Office of Diversion Control delayed filing administrative
10 actions such as an immediate suspension order while a
11 criminal investigation was ongoing?

12 A. Yes.

13 Q. Thank you.

14 THE COURT: And just so the jury
11:47:25 15 understands what we just did there, there are federal
16 regulations that govern what a present or former federal
17 official may testify to.

18 And so that was why the question was
19 rephrased the way Mr. Majoras did, and why the witness
11:47:47 20 answered the way he did.

21 BY MR. MAJORAS:

22 Q. So, Mr. Rannazzisi, I'd like to talk to you now
23 about diversion, which I think you covered in some, some
24 detail with plaintiffs' counsel earlier.

11:48:01 25 Would you agree that the most frequent way

1 prescription controlled substances are obtained for
2 nonmedical use is from family and friends?

3 A. No.

4 Q. I'm going to ask you to turn to your West Virginia
11:48:22 5 trial testimony again, and that was testimony you gave in
6 a Federal Court like this one?

7 A. Yes.

8 Q. You did that under oath?

9 A. Yes.

11:48:30 10 Q. You swore to tell the truth in that testimony?

11 A. Yes.

12 Q. I'm going to ask you specifically -- and let's not
13 put this on the screen yet, please -- to turn to the
14 testimony on June 9th, 2021, Page 137, Line 23.

11:48:54 15 Are you with me?

16 A. Line --

17 Q. Line 23, continuing over until Page 138.

18 A. Oh, 138?

19 Q. Starts on 137. Should be a question beginning with
11:49:10 20 the word "Sure."

21 A. Yes.

22 Q. Okay. And I'm going to ask that this be displayed
23 on the screen so you can see it there, too, if that's
24 helpful.

11:49:23 25 At that -- at that trial, you were asked

1 the following question: "Sure. Of course. The most
2 frequent method of obtaining a pharmaceutical controlled
3 substance for nonmedical use is friends and family for
4 free?"

11:49:39 5 And your answer was: "Yes. I've testified
6 to that based on the opinion of the Administration, but
7 that was not my own personal view."

8 Correct?

9 A. That is correct.

11:49:49 10 Q. Have I read that correctly?

11 A. Yes.

12 Q. So this is one of the -- you mentioned at the
13 beginning of your testimony that from time to time you
14 were a mouthpiece for the Administration but from time to
11:50:00 15 time you might disagree with it?

16 A. That is correct.

17 That was the Administration's view through
18 ONDCP, yes.

19 Q. So your testimony or your description of that,
11:50:12 20 about the family and friends for free, was the view of
21 the Administration; in other words, the DEA, correct?

22 A. Yes.

23 Well, not necessarily the DEA, but the
24 Administration.

11:50:28 25 Q. But you were -- when you talk about that you were

1 always -- I'm sorry, whenever you had a discussion about
2 this, it was in your role at the DEA, right?

3 A. Because again, that was the position of the
4 Administration, and you do have to present the position
11:50:42 5 of the Administration, yes.

6 Absolutely.

7 Q. So in terms of friends and family as a source of
8 prescription medication diversion, let me try this, try
9 this again.

11:50:55 10 In terms of friends and family as a source
11 of prescription medications, someone who is not actually
12 the person who is prescribed the medication may just
13 simply take those out of the medicine cabinet, right?

14 A. That is a form of diversion, yes.

11:51:10 15 Q. It's also a form of diversion if someone has a
16 prescription and simply gives that to the family or
17 friend because they think it might help that family or
18 friend?

19 A. I guess that would happen.

11:51:29 20 So, yeah, that is another form of
21 diversion, yes.

22 Q. So a family or friend -- a family member or a
23 friend may actually steal the prescription from the
24 medicine cabinet, that's a form of diversion?

11:51:41 25 A. That's correct, but it's a very small volume.

1 Q. But it's likewise a form of diversion, though, if
2 the person who actually has the prescription simply gives
3 it to that person because, you know, they may think that
4 will help that other person, right?

11:51:56 5 A. Yes. Again, but it's a very small volume.

6 Q. Both of those are diversion, though, correct?

7 A. Yes.

8 Q. I'm going to turn our attention now to your
9 testimony about suspicious -- Suspicious Order Monitoring
11:52:15 10 programs.

11 Now, do you recall when you testified about
12 that?

13 A. Yes, sir.

14 Q. There's no official checklist of specific elements
11:52:25 15 that a Suspicious Order Monitoring system must have from
16 the DEA, correct?

17 A. The regulations are pretty straightforward, so, no,
18 I don't believe there's anything outside of the
19 regulations and the two letters or the three letters that
11:52:46 20 we sent.

21 Q. But the DEA leaves the development and operation of
22 a SOM system, Suspicious Order Monitoring system, to the
23 registrant, correct?

24 A. Yes.

11:52:58 25 It would be a business decision of the

1 registrant how he would establish and set up.

2 Q. And in part, that's -- I'm sorry, did I cut you
3 off, sir?

4 A. No. That's fine.

11:53:08 5 Q. And in part, that's because the particular
6 registrant, the distributor, is the one that knows their
7 customers and employees better than anyone else, correct?

8 A. They know their customer base, they know their
9 employees, and they know their capabilities at their
11:53:25 10 distribution facilities, yes.

11 Q. And in this case, the distribution issues in this
12 case, you understand to the extent they existed among the
13 defendants were only distributing to their own stores,
14 correct?

11:53:39 15 A. Yes, I believe so.

16 Q. So you talked to the jury about your definition
17 of -- and I don't mean to say it's your definition -- the
18 definition you used for suspicious order and how it
19 includes orders of unusual size, deviating substantially
11:54:11 20 from a normal pattern, and orders of unusual frequency.

21 Do you recall that?

22 A. Yes, sir.

23 Q. So I want to follow up on that.

24 Those, those criteria are actually the only
11:54:22 25 ones specified in the regulation, right?

1 A. That is correct. Yes.

2 Q. And when this comes to applying the criteria to
3 determine whether an order is suspicious, that's the
4 judgment that the DEA leaves to the distributors that we
11:54:33 5 just talked about?

6 A. Yes. As long as it meets the -- the requirements
7 of 1301.74, yes.

8 Q. And those are the requirements I just read, right?

9 A. Yes. And that the reporting requirement, which is
11:54:48 10 underneath it.

11 Q. And in your policy at the -- while at the DEA was
12 that you could not tell a distributor if a particular
13 order was suspicious, right?

14 A. That was the policy of the Drug Enforcement
11:55:10 15 Administration and the Department of Justice, yes.

16 Q. So if a distributor were to contact the DEA by -- I
17 do that all the time. Let me start over.

18 If a distributor were to contact the DEA
19 and ask by letter or e-mail or by phone call whether a
11:55:25 20 particular order should be considered suspicious, the
21 DEA's position was that it would not answer that
22 question?

23 A. Again, the Drug Enforcement Administration has no
24 idea about your customer base.

11:55:40 25 We don't know about your customer base. We

1 don't know historically what a customer's done. We don't
2 know historically how you've distributed. We don't know
3 the -- the range of drugs, the quality, the different
4 types of drugs this pharmacy is getting.

11:55:57 5 So, no, we wouldn't answer that question.

6 Q. And, in fact, the DEA did not even have any
7 internal guidance for what qualified as a suspicious
8 order, did it?

9 A. Well, yeah, we followed the regulations.

11:56:09 10 Q. The one we just read?

11 A. The ones you just read, yes.

12 Q. And likewise, the DEA had no internal guidance as
13 to what would constitute a compliant system; in other
14 words, a system that would comply with the regulations.

11:56:25 15 Is that correct?

16 A. Well, yeah, the internal guidance would be that the
17 system would identify suspicious orders for reporting.

18 Q. But other than that, the DEA didn't spell out, for
19 example, what a Suspicious Order Monitoring system should
11:56:44 20 have as its components?

21 A. How you get to the point of 1301.74, identification
22 and reporting is up to the company, as I testified to.

23 No, we wouldn't tell you what your
24 system -- we wouldn't offer you "This is the system that
11:57:02 25 you should use," no.

1 Q. And in particular, one of the things that you would
2 not do is tell a distributor you should have a certain
3 computer system that does any particular aspects of order
4 monitoring, do you?

11:57:14 5 A. Again, no, the department and DEA would not do
6 that.

7 Q. I believe you talked about, in your earlier
8 testimony, about information that registrants could send
9 to the DEA about their suspicious orders, correct?

11:57:35 10 A. Could you repeat that question? I'm sorry.

11 Q. Sure, and it was mainly just a set-up.

12 You recall there was some testimony earlier
13 about the information the DEA would like to receive about
14 suspicious orders, correct?

11:57:49 15 A. Yes.

16 Q. And, in fact, what you wanted the registrants to
17 send your office or the relevant field office were
18 specific suspicious orders, the truly suspicious ones,
19 right?

11:58:05 20 A. That is correct. Yes.

21 Q. And, in fact, I think you gave some examples of
22 where, you know, maybe the order was for 20,000 and
23 suddenly goes to 40,000, and maybe even up to a hundred
24 thousand; is that right?

11:58:16 25 A. Yes.

1 Q. That was --

2 A. That was just an example.

3 I mean, there's -- there's several
4 different ways you could identify a suspicious order.

11:58:27 5 That's -- that was a basic example of what
6 a suspicious order would look like.

7 Q. So that's the example you gave us at this trial,
8 but the DEA didn't actually publish examples of
9 suspicious orders, did it?

11:58:40 10 A. Didn't publish examples of suspicious orders, but I
11 believe in one of the letters, maybe it was the first
12 letter, it talks about how to evaluate the suspicious
13 order based on the criteria and definitions within
14 1301.74(b). I believe that's in the 2006 letter.

11:59:02 15 Q. Sir, in the information that the DEA sent to the
16 public, your testimony is now that the DEA is going to
17 give specific information as to how to identify a
18 suspicious order?

19 A. No.

11:59:16 20 That -- you asked for a -- the question, I
21 believe you said, was you wanted to look at a specific
22 suspicious order, and I believe the letter kind of
23 discussed in each category how -- you know, one way you
24 could evaluate it, just to show you that there's ways to
11:59:36 25 evaluate it.

1 Q. Okay.

2 MR. MAJORAS: Your Honor, if this is
3 appropriate for you, I think it's a good point.

4 THE COURT: I would suggest that you break
11:59:43 5 at a convenient time, Mr. Majoras.

6 So, all right, ladies and gentlemen, we'll
7 take our lunch recess.

8 One hour. Usual admonitions apply, and
9 we'll pick up with the balance of this witness's
11:59:53 10 testimony.

11 (Jury out.)

12 THE COURT: All right. If everyone can be
13 seated for a moment.

14 Sir, you can step down. I have a matter I
12:00:31 15 want to cover.

16 Special Master Cohen and I have been
17 reviewing a number of objections to the designations of
18 Mr. Nelson's deposition.

19 He was a former Walmart employee, I
12:00:47 20 understand, and there were a number of objections to the
21 demonstratives that Mr. Lanier used in the deposition.
22 Basically the, I guess, charts that he created during the
23 testimony.

24 And Special Master Cohen and I have
12:01:02 25 determined that there are a lot of those charts,

1 demonstratives, where Mr. Lanier wrote things that the
2 witness didn't say or didn't agree to.

3 And the best thing -- this is what I've
4 concluded, that if the plaintiffs want to go forward with
12:01:24 5 the deposition, we'll just do it without the
6 demonstratives and the charts.

7 But if the plaintiffs prefer to have
8 Mr. Nelson testify live via video, they may do so.
9 That -- they are allowed one, one witness per defendant,
12:01:44 10 and if they want to use their Walmart witness to be
11 Mr. Nelson, they can do so.

12 So it's their choice, either use the
13 deposition without the charts, without the
14 demonstratives, and just the witness's answers and, of
12:02:00 15 course, the questions, or have him -- arrange to have him
16 testify live via video.

17 MR. LANIER: Understood, Your Honor.

18 Can we have until after lunch to make that
19 decision?

12:02:09 20 THE COURT: That's fine. You can --

21 MR. LANIER: Thank you, Judge.

22 MS. FUMERTON: So, Your Honor, just to
23 respond to a couple of things on that point.

24 So, first of all, they had made their
12:02:21 25 selection under your trial order as to which their one

1 witness would be under Rule 43.

2 Your order specifically states that if then
3 the defendant chooses to bring that witness live, that
4 they don't get a second choice. So they had chosen
12:02:36 5 Suzanne Hiland as their Rule 43 witness.

6 We then said we would bring her live, so we
7 don't think it's fair for them to get a second bite at
8 the apple with respect to this.

9 MR. LANIER: So, Your Honor, if we need to
12:02:50 10 do this with Mr. Nelson and that's the choice we make, we
11 will forego Ms. Hiland as our one choice.

12 We will make that determination over lunch.

13 MS. FUMERTON: Again, I'm not quite sure
14 that's how the process was supposed to go.

12:03:01 15 THE COURT: Well, Ms. Fumerton, I mean you
16 objected.

17 I mean, I'm trying to be fair to everyone
18 and they get one Walmart witness, you know, remotely, and
19 you get -- you can do the same thing.

12:03:13 20 So there's no way -- there's no way to, you
21 know, say this slides in, this slides out, it will all be
22 truncated, so this is the cleanest way to do it.

23 And if they are happy with that, we will do
24 it. If they want to have Mr. Nelson testify live via
12:03:34 25 video, then -- and I'll make sure that any demonstratives

1 Mr. Lanier uses are within my boundaries, which is
2 they've got to be accurate, and they can't be in advance
3 of what the witness says.

4 MS. FUMERTON: So, Your Honor, the only
12:03:48 5 other point that -- I guess two additional points we
6 would make is we objected at the time during the
7 deposition that these demonstratives were being made and
8 that they were inaccurate.

9 He had the opportunity during the
12:04:01 10 deposition to do that. He chose, Mr. Lanier chose not
11 to, to forego that, and to continue to use his misleading
12 demonstratives.

13 So it seems unfair for Walmart to then have
14 to bear the --

12:04:15 15 THE COURT: Walmart is benefiting because a
16 number of the demonstratives are okay, and I'm telling
17 him he can't use any of them.

18 MS. FUMERTON: So, Your Honor, we have a
19 much easier way to solve this issue would be not to show
12:04:29 20 the demonstratives. That absolutely can be done. The
21 witness can still testify.

22 THE COURT: Well, I've made my ruling. I
23 think it's a fair one.

24 MR. LANIER: Thank you, Judge.
12:04:43 25 (Luncheon recess taken).
(Proceedings concluded at 12:04 p.m.)

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1 WEDNESDAY, OCTOBER 13, 2021, 1:16 P.M.

2 (Jury in.)

3 THE COURT: All right. Please be seated.

4 All right. I apologize for the delay. I

13:19:14 5 had two criminal matters during the noon hour, and one of
6 them started late because of some technical issues and it
7 finished late.

8 So it was on me.

9 So, Mr. Majoras, you may continue your
13:19:27 10 cross-examination.

11 And, Mr. Rannazzisi, you're still under
12 oath from this morning.

13 THE WITNESS: Thank you, Your Honor.

14 MR. MAJORAS: Thank you, Your Honor. Good
13:19:35 15 afternoon, folks. Good afternoon, Mr. Rannazzisi.

16 THE WITNESS: Good afternoon.

17 CROSS-EXAMINATION OF JOSEPH RANNAZZISI (RESUMED)

18 BY MR. MAJORAS:

19 Q. And I just remind you again in terms of the
13:19:43 20 questions I'm asking you and the basis for your response
21 to continue to do what you've done both with me and
22 Mr. Lanier, to talk within your personal information,
23 personal experience.

24 Is that fair?

13:19:52 25 A. I'm sorry, could you --

1 Q. Is it fair that you continue to do that, speak from
2 your own personal experience and information?

3 A. Based on my time at DEA, yes.

4 Q. Yes, sir.

13:20:03 5 A. Based on my tenure at DEA, yep.

6 Q. Exactly. I want to go back to a topic you and I
7 spoke about earlier, which was the quotas.

8 And I want to make sure there's no
9 confusion here.

13:20:16 10 One of the things we talked about was
11 exports, do you recall that, just briefly?

12 A. Yes, sir.

13 Q. And I want to make sure the exports we're talking
14 about, there are exports of legitimate products and

13:20:29 15 chemicals used in the substances that the DEA is
16 providing quotas on, correct?

17 A. No. Companies will export raw materials that's
18 manufactured here in the United States. It's part of the
19 aggregate production quota, yes.

13:20:45 20 Q. Okay. And I guess what I want to get to is if you
21 talk about, for example, illegal heroin, that's not
22 included at all in the quota?

23 A. That's not necessarily true, because there's
24 research being done in all aspects of opioids. There
13:21:01 25 could be someone out there who's doing something with

1 heroin, so it could be in the quota, yes.

2 Q. You'd expect that to be very minor?

3 A. Very small, yes.

4 Q. And the same question with illegal Fentanyl we've
13:21:14 5 often heard exported into the United States, that's not
6 part of a quota, right?

7 A. No. There's no illicit drug that's outside of the
8 closed system of distribution that's within the quota.

9 Q. Sir, I'd like to turn your attention now, if you
13:21:30 10 would, to a new exhibit, and it's in your book, it's
11 Defendants' Exhibit MDL 01107.

12 Could you turn to that, please?

13 A. Yes.

14 Q. Ready?

13:22:06 15 A. Yes.

16 Q. Thank you.

17 While you were at the DEA, the Government
18 Accountability Office had concluded in a report that the
19 DEA should give more guidance to distributors, correct?

13:22:20 20 A. Yes. There was a report that was done, yes.

21 Q. The GAO or the Government Accountability Office is
22 often referred to as a watchdog within the Government?

23 A. I'm sorry?

24 Q. I said is it true that the Government

13:22:33 25 Accountability Office or the GAO is often referred to as

1 a watchdog within the Government?

2 A. They're auditors of Government programs.

3 Q. So if we look at what we have in front of us, and
4 in front of you, on the monitor, it's the United States
13:22:49 5 Government Accountability Office Report to Congressional
6 Requesters, and the date is June, 2015.

7 Correct?

8 A. Yes.

9 Q. That was prior to your retirement?

13:22:58 10 A. Yes.

11 Q. And the title of the report itself is "Prescription
12 drugs, more DEA information about registrants' controlled
13 substances roles could improve their understanding and
14 help ensure access."

13:23:17 15 Is that right?

16 A. That's what it says, yes.

17 Q. Just so the jury is reminded of this, distributors
18 are the groups that are also referred to as wholesalers,
19 correct?

13:23:31 20 A. That's correct.

21 Q. And you're not only aware that this report came out
22 while you were at the DEA, you actually responded to it,
23 didn't you?

24 A. Yes, I did.

13:23:43 25 Q. Why don't we take a look at that, it's at Page 82,

1 please.

2 And you can see here that this is the
3 response that you sent to the DEO -- I'm sorry -- the GAO
4 report once it came out, correct?

13:24:03 5 A. That's correct.

6 Q. That's your signature?

7 A. Yes, it is.

8 Q. All right. Let's look to some other parts of the
9 report itself, and in particular, I'm going to ask you to
10 turn to Page 27.

11 And in particular, I'm going to go to I
12 guess which is the first full paragraph, the one
13 beginning "The guidance document."

14 And you would agree that this is one of the
13:24:38 15 recommendations that the GAO had, which is that "A
16 guidance document for distributors similar to one offered
17 for pharmacies and practitioners could help distributors
18 further understand and meet their roles and
19 responsibilities under the CSA for preventing diversion,
13:24:55 20 though the document may not need to be as detailed."

21 Do you see that?

22 A. Yes.

23 Q. And it continues that "Such steps are key to
24 addressing distributors' concerns, as without sufficient
13:25:07 25 guidance and communication from DEA, distributors may not

1 be fully understanding or meeting their roles and
2 responsibilities under the CSA for preventing diversion."

3 Did I read that correctly?

4 A. Yes, I believe so.

13:25:21 5 Q. And in furthering the Government Accountability
6 Office's recommendation, there's an additional part
7 beginning with "In the absence of" in the middle, and
8 I'll ask Mr. Ferry to highlight that so we know where it
9 is.

13:25:43 10 MR. MAJORAS: About two-thirds of the way
11 down, right about there, Steve. Just lightly higher.
12 Okay. Thank you.

13 Q. So the additional recommendation is that "In the
14 absence of clear guidance from DEA, our survey data show
13:26:00 15 that many distributors are setting thresholds on the
16 amount of certain controlled substances that can be
17 ordered by customers, i.e. pharmacies and practitioners,
18 which can negatively impact pharmacies and ultimately
19 patients' access."

13:26:15 20 Is that what the GAO wrote?

21 A. Yes.

22 MR. MAJORAS: Let's turn to Page 44 of
23 their report, please.

24 So, Mr. Ferry, if you would go to the
13:26:47 25 second recommendation.

1 No, I'm afraid I'm not -- I'm not with you.
2 If you could take that down, please. Oh, I'm sorry, I'm
3 reading the wrong -- my wrong notes.

4 Let's, again -- you're correct where you
13:27:16 5 are, Mr. Ferry. Please highlight that.

6 BY MR. MAJORAS:

7 Q. So an additional recommendation, do you see where I
8 am, sir, in the middle of the page, "Solicit input from
9 distributors"?

13:27:26 10 A. Yes.

11 Q. The additional recommendation from the Government
12 Accountability Office is that "Solicit input" -- is to
13 "Solicit input from distributors or associations
14 representing distributors, and develop additional
13:27:39 15 guidance for distributors regarding their roles and
16 responsibilities for suspicious orders monitoring and
17 reporting."

18 And that's what the GAO is recommending to
19 the DEA, correct?

13:27:49 20 A. That's correct.

21 Q. And the DEA responded to that second
22 recommendation, didn't it?

23 A. I have to go back and look. It's been awhile.

24 Q. Well, if we go into the -- if we go into the same
13:28:04 25 document, Page 45, please. And the bottom paragraph

1 starting, "DEA raised concerns."

2 So the GAO in writing their report, they
3 recognized that the DEA had raised concerns and wrote,
4 "DEA raised concerns about our second recommendation to
13:28:36 5 solicit input from distributors or associations
6 representing distributors, and develop additional
7 guidance for distributors regarding their roles and
8 responsibilities for suspicious orders monitoring and
9 reporting. DEA stated that short of providing arbitrary
13:28:54 10 thresholds to distributors, it cannot provide more
11 specific suspicious orders guidance because the variables
12 that indicate a suspicious order differ among
13 distributors and their customers."

14 Do you see that, sir?

13:29:06 15 A. Yes.

16 Q. And you had testified earlier that some of those
17 variables and what the distributors knew about their
18 business would be important in arriving at their own
19 thresholds, correct?

13:29:19 20 A. Yes. That's why it's a business decision.

21 Q. Okay. I'd like to turn our attention now to your
22 testimony about red flags.

23 Is it fair to say that the DEA does not
24 regulate the practice of medicine?

13:29:40 25 A. No, the practice of medicine is regulated by the

1 states.

2 Q. And the DEA does not define medical standards of
3 practice either, does it?

4 A. Again, the practice of medicine's regulated by the
5 states.

13:29:55

6 Q. Let's turn to Defendants' Exhibit MDL 10857,
7 please.

8 And this is, on the screen in front of us
9 is -- if you would take that down just a moment,

13:30:32

10 Mr. Ferry. Thank you.

11 This is a -- I'm trying to read it -- a
12 response to a request, and if you look at the re: line on
13 the top, the subject is "Concern about current
14 regulations."

13:30:49

15 Do you see that, sir?

16 A. Yes, sir.

17 Q. Okay. And if we go into the document, I know we've
18 taken out the specific information about to whom it was
19 sent; in fact it may have been produced to us that way.

13:31:01

20 If we go to the bottom of the paragraph,
21 the first paragraph that says, "The doctor is the one,"
22 it says, "The doctor is the one who goes to medical
23 school and is licensed by the state in which he or she is
24 located to practice medicine. The doctor is the
13:31:18 25 only" -- I'm sorry -- "The doctor is the one who is

1 legally authorized to make these medical decisions, not
2 the DEA. The DEA will only intervene in those situations
3 where a doctor or pharmacist is engaged in large-scale
4 illegal dispensing and distribution of controlled
13:31:36 5 substances."

6 And is that consistent with the DEA's
7 position when you were in your position there?

8 A. Well, that's not the standard, and this letter was
9 done four years after I left, and I've never seen this
13:31:56 10 letter, and I don't know who wrote the letter, I don't
11 know the context of the letter.

12 But not necessarily.

13 Our standard is for doctors, according to
14 *Moore*. Issuing a prescription for legitimate medical
13:32:09 15 purpose in the usual course of professional practice,
16 that same standard operates for the pharmacists,
17 including the corresponding responsibility analysis
18 that's required by the pharmacists.

19 This is not -- this is not anything I've
13:32:22 20 ever seen before. It's not anything that I can really
21 comment on because it's --

22 Q. Fair enough.

23 MR. LANIER: And, Your Honor, I am going to
24 object.

13:32:33 25 Mr. Majoras then has asked a question about

1 a document four years after this gentleman left the DEA,
2 asking this gentleman his opinion on which, which can
3 only be asked as an expert; it cannot be asked as a fact
4 witness since this is not something he was there for.

13:32:48 5 And if we're opening him up to that kind of
6 testimony, then I think it's an open door.

7 MR. MAJORAS: Your Honor, my question is
8 very --

9 THE COURT: The question was asked: Is
13:32:58 10 this consistent with what the view of the DEA when you
11 were in charge, when you were there, and he said no, and
12 he explained it.

13 So I think that's a fair question. He said
14 it's not, things have changed.

13:33:26 15 BY MR. MAJORAS:

16 Q. Let's turn to another exhibit, Defendants' Exhibit
17 MDL 00498.

18 A. Yes, sir.

19 Q. So this document, as you can see, is titled "*The*
13:33:57 20 *Practitioner's Manual*, an Informational Outline of the
21 Controlled Substances Act."

22 Do you see that?

23 A. Yes, sir.

24 Q. And it was produced by the United States Department
13:34:06 25 of Justice Drug Enforcement Administration, correct?

1 A. Yes, sir.

2 Q. That's the DEA?

3 A. Yes, sir.

4 Q. And the date on this is 2006, is that correct, sir?

13:34:12 5 A. That's correct.

6 Q. This is the DEA's practitioner manual that your
7 office published at that time, right?

8 A. Yes, sir.

9 Q. And the purpose of the manual is to provide
10 guidance to prescribers regarding their duties under the
11 Controlled Substances Act, correct?

12 A. It's that, and also an overview of the Controlled
13 Substances Act and controlled substances.

14 Q. You would agree that there are no specific federal
13:34:55 15 limits on the quantity of drugs that can be dispensed to
16 be a prescription, correct?

17 A. There is nothing in the statute based on quantity
18 of a prescription -- quantity of drugs written in a
19 prescription.

13:35:17 20 Q. And that's because the criteria, like a
21 prescription quantity, will vary from patient-to-patient
22 and depend on the patient's unique medical history and
23 condition?

24 A. Yes, I would say that's probably one of the
13:35:34 25 reasons, yes.

1 Q. Now, the DEA never published a distributor's
2 manual, did it?

3 A. During my tenure at the Drug Enforcement
4 Administration, we did not publish a distributor's
13:35:56 5 manual.

6 Q. And we just looked at a *Practitioner's Manual*, but
7 the DEA also published a *Pharmacist's Manual*, right?

8 A. That's correct. Yes.

9 Q. And that manual contains public -- published
13:36:14 10 guidance from the DEA specifically for pharmacists?

11 A. The *Pharmacist's Manual*, yes, for operation of
12 controlled substance within the pharmacies, yes.

13 Q. So let's just mark that so we can make sure we're
14 talking about the same thing.

13:36:29 15 If we could turn to Defendants' Exhibit MDL
16 00507, please.

17 A. Yes, sir.

18 Q. And again, you have the front page on the screen.

19 It's identified as a document from the United States

13:36:50 20 Department of Justice Drug Enforcement Administration,
21 correct?

22 A. Yes, sir.

23 Q. And it's titled *Pharmacist's Manual*, an

24 Informational Outline of the Controlled Substances Act,
13:37:00 25 correct?

1 A. That is correct.

2 Q. This particular one was revised in 2010?

3 A. Yes.

4 Q. The DEA from time to time will revise its manuals
13:37:08 5 when it feels a need?

6 A. Yes.

7 Q. In fact, this particular one, given the time
8 period, 2010, was a manual that you reviewed and
9 approved, right?

13:37:24 10 A. Yes.

11 Q. In fact, if we turn to the second page of the
12 manual, we see your name right there, second from the
13 top, correct?

14 A. Yes, sir.

13:37:45 15 Q. And you would agree that it's important for a
16 manual such as this to be complete and accurate, right?

17 A. Based on the -- complete and accurate synopsis of
18 the regulations and the statute, yes. That's what it's
19 for, so they don't have to go through the whole book of
13:38:06 20 regulations and statutes to find something that was
21 pertinent to them.

22 Q. And you're not aware of anything in this manual, in
23 the *Pharmacist's Manual*, that instructs a pharmacist to
24 document resolution of red flags, are you?

13:38:25 25 A. Not in this manual, no.

1 Q. So you gave an example, I think it may have been
2 yesterday, may have been this morning, about if a
3 pharmacist were to call a doctor's office to get
4 information, you gave that as an example of something you
13:38:42 5 thought should be documented, correct?

6 A. Yeah. And I'm pretty sure that under state law
7 that would be something that should be documented, yeah.

8 Q. Is that written in this manual, sir?

9 A. Again, we don't dictate the practice of pharmacy.
13:38:57 10 That's done by the state. That's why it would be in
11 state law, but we would look at the state law to
12 determine if the practitioner, be it a pharmacist or a
13 doctor, was doing what he was doing in line with the
14 practice guidelines of the state.

13:39:12 15 Q. Anything in this document say -- anything in this
16 *Pharmacist's Manual* say "If you want to learn about
17 documentation, take a look at state law"?

18 A. No.

19 Q. And you would also agree that there's nothing in
13:39:35 20 the *Pharmacist's Manual* that talks about using a
21 pharmacy's computer systems or algorithms to identify red
22 flags, is that right?

23 A. I don't believe there's anything in this manual
24 that discusses that.

13:39:54 25 Q. Are you aware of any statute or regulation from

1 your time at the DEA that states a pharmacist must
2 document the resolution of red flags on prescriptions?

3 A. Again, during my time at the DEA, I don't recall
4 any, any document that states that, no.

13:40:13 5 Q. And are you aware of any point in time in your time
6 at the DEA where the DEA sent a "Dear Registrant" letter
7 to pharmacists or pharmacies, instructing them on how to
8 document resolution of red flags?

9 A. No.

13:40:38 10 Notice would probably be given within the
11 final orders that were handed down by the
12 Administrator -- by the DEA Administrator.

13 Q. And are you aware of anyone at DEA sending a "Dear
14 Registrant" -- maybe I should qualify what that is.

13:41:00 15 We saw some "Dear Registrant" letters
16 earlier today, didn't we?

17 A. Yes, sir.

18 Q. And those are the types of letters the DEA would
19 send to someone who has a DEA registration, providing
13:41:11 20 information the DEA wanted them to know?

21 A. Yes, sir.

22 Q. And are you aware of anyone at DEA ever sending a
23 "Dear Registrant" letter to a pharmacist or pharmacies
24 instructing them to use their computer systems or
13:41:26 25 computer algorithms to identify red flags on

1 prescriptions?

2 A. No. DEA wouldn't do that, because that's something
3 that we wouldn't do.

13:41:39

4 Q. I'd like to turn now to some of your discussion of
5 red flags from this morning.

6 A. Sure.

7 Q. I'll try to put up a slide that you saw earlier.

13:42:10

8 But before I do that, one of the -- one of
9 the red flags that you've identified is distance between,
10 I think you discussed some of that yesterday, between the
11 pharmacist and where the patient lives, and perhaps where
12 the doctor's located?

13 A. Yes, sir.

13:42:21

14 Q. And I believe in your examples, and if I'm wrong
15 just tell me, you used 50 miles or 20 miles for some of
16 those examples, correct?

17 A. Yes, sir.

13:42:38

18 Q. Your significant point of your testimony is that
19 distance is a potential indication, if there are
20 significant distances that's a potential indication of a
21 possible problem with that prescription, correct?

22 A. Distance can be a factor, yes.

13:42:53

23 Q. And there's no specific number of miles between a
24 prescriber and a patient that would trigger a red flag,
25 is there?

1 A. No. There's no specific, but there's some things
2 that just jump out at you.

3 Q. Sure. And in that case, a pharmacist should use
4 their professional judgment, right?

13:43:07 5 A. That's right.

6 He should inquire, make inquiries.

7 Q. Unless the pharmacist, because of the local area,
8 already understands what the circumstances are, right?

9 A. Well, now you're asking me to put myself in the
13:43:22 10 pharmacist's position.

11 Q. I won't do that.

12 A. The pharmacist uses professional judgment, yes.

13 Q. Fair enough. Thank you.

14 I'm going to try to put this up on the
13:43:45 15 screen.

16 Mr. Pitts, if I could switch over.

17 Do you recognize this slide that you saw
18 this morning that Mr. Lanier showed you which was
19 entitled "Resolution is comprised of many factors"?

13:44:05 20 A. Yes.

21 Q. And the resolution we're talking about here is a
22 resolution of red flags, right?

23 A. Yes.

24 Q. And if you look at the third point, you just made
13:44:19 25 this point about using professional judgment, which

1 includes training and experience; is that right?

2 A. Yes.

3 Q. You even note in your slide that we all make
4 mistakes, right?

13:44:28 5 A. That's -- that's absolutely correct.

6 Q. Judgment, sometimes judgments are correct,
7 sometimes they're wrong?

8 A. Yes. Just when you make the same mistake 30 times
9 in the same day, that's no longer a mistake.

13:44:40 10 Q. Fair enough.

11 Would you agree with me that, if you go to
12 the fourth bullet point, "Knowledge and history with the
13 patient," that's something that the individual pharmacist
14 on location might be able to assess, right?

13:44:53 15 A. Absolutely. Yes.

16 Q. And when we talk about circumstances of
17 prescription presentation, this may come down to how the
18 person looks as they're providing the prescription to the
19 pharmacy?

13:45:06 20 A. Not so much look as far -- that's not what that is
21 for.

22 I think in that bullet we're talking about
23 three people are walking in and handing the pharmacist
24 the same prescription from the same doctor who is a few
13:45:21 25 miles, 30, 40 miles away; yeah, those are circumstances

1 that the pharmacist should look at.

2 Q. So that's something that the pharmacist in the
3 store should be observing, right?

4 A. Absolutely.

13:45:32 5 Q. And when you talk about the next bullet point,
6 "Experience with prescribing practitioner," that's the
7 pharmacist's experience, right?

8 A. That's correct. Yes.

9 Q. And then I want to make the point, the last bullet
13:45:45 10 point, it says here, "It does not require a call to the
11 practitioner for every CS Rx," CS is controlled
12 substance, is that right?

13 A. That's correct.

14 Q. And Rx is prescription?

13:45:57 15 A. That's correct.

16 Q. So the resolution of red flags doesn't always
17 require a call to the prescriber, right?

18 A. May I explain why that's there?

19 Q. Well, first, I'd like an answer to my question.

13:46:07 20 A. It doesn't, no, it doesn't require a call for every
21 controlled substance prescription.

22 Q. Okay.

23 You can take that down, Mr. Pitts. Thank
24 you.

13:46:27 25 Yesterday, Mr. Lanier asked you some

1 questions about ratios of controlled substances to
2 noncontrolled substances that have been dispensed. Do
3 you recall that?

4 A. Yes.

13:46:39 5 Q. Now, you agree that that ratio can be an indicator
6 of diversion, correct?

7 A. Yes, it can be, yes.

8 Q. And so just so we're clear, when we're talking
9 about "the ratio" is if we look at the amount of
13:46:52 10 controlled substances that are dispensed, and we compare
11 it to the overall prescriptions dispensed by the
12 pharmacy, correct?

13 A. That's correct. Yes.

14 Q. And you, you talked about rogue pharmacies.

13:47:07 15 In your experience at the DEA, you have
16 found rogue pharmacies to have that ratio as high as 90
17 to 95 percent, haven't you?

18 A. It was high. I don't know if 90 95, but we've seen
19 pharmacies in the '70s, yes, absolutely.

13:47:27 20 Q. And those numbers are probably -- when the numbers
21 are that high, that's a problem to you at the DEA, right?
22 Or let me rephrase that.

23 When the numbers are that high, you see
24 that as a problem at the DEA, right?

13:47:40 25 A. Again, it can be a problem. It's part of an

1 analysis that's being done.

2 Q. It's a useful measurement?

3 A. It's an indicator, it's a pointer.

4 Q. I want to be sure we understand your relationship,

13:47:59 5 your testimony in relationship to Trumbull County and

6 Lake County.

7 You're not here to tell the jury whether

8 any of the pharmacy defendants, in fact, shipped a

9 suspicious order into Lake or Trumbull County, are you?

13:48:12 10 A. No. I'm here to discuss my time at DEA and what

11 happened during that time.

12 Q. So you haven't made any analysis about Lake or

13 Trumbull County, either from the distribution side of the

14 business or the pharmacy side.

13:48:27 15 Is that fair?

16 A. That is correct.

17 Q. Switch topics again.

18 Would you agree that the DEA regulations

19 are clear that the responsibility for the proper

13:48:54 20 prescribing and dispensing of controlled substances is

21 upon the prescribing practitioner?

22 A. Yes. That's -- that's clear, because there's a

23 second part to that that discusses what the pharmacist's

24 responsibility are.

13:49:13 25 Q. But with respect to the practitioner or the doctor,

1 I'll just use that, that phrase, to the doctor, the
2 doctor is the one who examines the patient, makes the
3 diagnosis, and then designs the treatment; correct?

4 A. That's what's supposed to happen, yes.

13:49:41 5 Q. You would agree that none of the pharmacy
6 defendants in this case are authorized by federal law to
7 write prescriptions, right?

8 A. In the State of Ohio?

9 Q. Yes, sir.

13:50:00 10 A. I believe I would agree with that, yes.

11 Q. Sir, I'd like to talk a little more about the
12 prescribing doctors.

13 During your time at the DEA, the DEA had
14 taken the -- had made the -- let me start over.

13:50:26 15 During your time at the DEA, the DEA had
16 stated that 99 percent or more of prescribers were not
17 overprescribing; isn't that right?

18 A. That was -- that statement was made in the context
19 of how many people were actually charged with
13:50:44 20 administrative criminal and civil violations.

21 Q. Well, you yourself were on record testifying that
22 99 percent of doctors are perfect, aren't you?

23 A. That's -- that's right, based on civil/criminal
24 administrative prosecutions.

13:50:59 25 Q. That was testimony you gave to Congress?

1 A. Yes.

2 Q. And during your time at the DEA, the DEA was also
3 on record as recognizing that nearly every prescription
4 issued by a physician in the United States is written for
13:51:23 5 a legitimate medical purpose in the usual course of
6 professional practice, correct?

7 A. That, I don't know where that came from.

8 Do you have a document that I could look
9 at, please?

13:51:43 10 Q. We have MDL 01096, please, Defense Exhibit. Let me
11 know when you're ready, sir.

12 A. Yes.

13 Q. Okay. So looking at the title or the initial page
14 of this document, this is a page on the *Federal Register*,
13:52:10 15 do you see that?

16 A. Yes, sir.

17 Q. It's dated September 6th, 2006, while you were at
18 the DEA; is that right?

19 A. Yes, sir.

13:52:17 20 Q. And in sort of the subheading it has Department of
21 Justice Drug Enforcement Administration?

22 A. Yes, sir.

23 Q. So let's go to Page 7, please.

24 The *Register* writes in very small prints, don't they?

13:52:52 25 The language I'm looking for is beginning

1 "To the contrary."

2 So you see it's highlighted on the screen.

3 You may find it in sort of the bottom right on that page.

4 A. In the very -- I'm saying, where is it? Is it

13:53:27 5 under "Other recurring questions"?

6 Q. It is -- Mr. Ferry, if you can move that up just a

7 touch -- right above "Other recurring questions," please.

8 A. Okay.

9 Q. So then up on the screen, the agency -- this is

13:53:40 10 what the agency reported in the *Federal Register*.

11 "To the contrary, the agency recognizes

12 that nearly every prescription issued by a physician in

13 the United States is for a legitimate medical purpose in

14 the usual course of professional practice."

13:53:53 15 Was that the agency's statement on that

16 issue?

17 A. Yes. That's -- that's in there, that's correct.

18 Q. And --

19 A. That's in there.

13:54:17 20 Q. -- this particular statement is something you would

21 have reviewed while you were in your role at the DEA,

22 correct?

23 A. Again, I would have reviewed it, but because this

24 is a *Federal Register* notice that would impact the

13:54:34 25 practice of medicine, it would impact certain aspects of

1 the Department of Justice and DEA, it would have to be
2 vetted through multiple agencies, including the FDA, so
3 FDA and HHS; so, therefore, again, this document is a
4 position of the United States Government; not necessarily
13:54:58 5 the Drug Enforcement Administration.

6 Q. And I'm not sure you answered exactly my question,
7 which is, do you recall that you did, in fact, review
8 this document before it was published in the *Federal*
9 *Register*?

13:55:09 10 A. Yes, I reviewed it with countless other people.

11 Q. Let's take a look at -- I think we may have
12 done -- I'm sorry, we're on the same document.

13 Let's look at Page 5 of this document,
14 please.

13:55:38 15 A. Page 5.

16 Q. And Mr. Ferry is going to call up a section of it
17 beginning "The number of physicians who prescribe," which
18 is actually a subheading of the document, so the
19 right-hand side, the subheading.

13:55:59 20 And the subheading reads, "The number of
21 physicians who prescribed controlled substances in
22 violation of the CSA is extremely small and there is no
23 DEA crackdown on physicians."

24 Did I read that correctly?

13:56:21 25 A. Yes, you did.

1 Q. And this is from that same document, which, as you
2 described, was the Government's position, correct?

3 A. That is correct.

4 Q. And if you go on further -- yes, Mr. Ferry, that's
13:56:42 5 exactly where I'm headed.

6 So down that same column, sir, there's the
7 italicized part beginning with the words "In any given
8 year" which is on the screen.

9 A. Yes.

13:56:53 10 Q. And as part of that document, the Government
11 stated, "In any given year, including 2005, fewer than
12 one out of every 10,000 physicians in the United States,
13 less than .01 percent, lose their controlled substance
14 registrations based on a DEA investigation of improper
13:57:12 15 prescribing."

16 Did I read that correctly?

17 A. That's correct. That's just the -- the
18 administrative cases.

19 Q. And in fact, that information provided was correct
13:57:24 20 information, right?

21 A. Yes.

22 Q. Moving on. Now, prior to your retirement, you were
23 transferred to another area of the DEA?

24 A. Prior to my retirement, I was -- yes, I was.

13:58:08 25 I was -- it was a position to be named.

1 Q. Okay. And part of the reason that you decided to
2 retire is that you felt it was time to leave rather than
3 move into that new position?

4 A. Well --

13:58:20 5 Q. It wasn't named. So --

6 A. The new position wasn't named, and I didn't want to
7 take another transfer and submit my family to another
8 transfer wherever.

9 I had already transferred numerous times.

13:58:43 10 Q. Sir, I'd like to show you -- and, Mr. Pitts, I'll
11 ask you to bring up the monitor again -- this is another
12 slide that you talked about this morning.

13 Do you recall that?

14 A. Yes, sir.

13:59:04 15 Q. And you said that you wanted to make clear to the
16 audience that because you had no financial relationships,
17 you had no bias, correct?

18 A. That is correct.

19 Q. Now, since you retired from the Government, you get
13:59:18 20 your Government pension, right?

21 A. Yes, sir, I do.

22 Q. But your only other income at the moment comes from
23 your working with plaintiffs' lawyers in litigation like
24 this, correct?

13:59:29 25 A. That's correct.

1 Q. And I believe you've testified that since 2017,
2 you've received over \$950,000 for working with those
3 plaintiffs' lawyers?

4 A. Yeah. I believe it's less than that, but 900,
13:59:44 5 yeah.

6 Q. In that range?

7 A. In that area, yeah.

8 Q. And is it fair to say that the vast majority of
9 your income comes from your work with plaintiffs'
13:59:51 10 lawyers?

11 A. Yes.

12 Q. And that has been the case since 2017, correct?

13 A. Yes.

14 MR. MAJORAS: No further questions, Your
14:00:01 15 Honor.

16 Thank you, Mr. Rannazzisi.

17 MR. SWANSON: No additional questions for
18 Walgreens, Your Honor.

19 Thank you.

14:00:15 20 MR. DELINSKY: Nothing further from CVS,
21 Your Honor.

22 Thank you, Mr. Rannazzisi.

23 THE COURT: Okay.

24 MS. FIEBIG: Your Honor, if I may for Giant
14:00:21 25 Eagle.

1 THE COURT: Yes, Ms. Fiebig.

2 CROSS-EXAMINATION OF JOSEPH RANNAZZISI

3 BY MS. FIEBIG:

14:00:31

4 Q. Good afternoon, Your Honor, ladies and gentlemen of
5 the jury, and Mr. Rannazzisi.

6 A. Good afternoon.

7 Q. My name is Chantale Fiebig and I'm representing
8 Giant Eagle today.

14:00:38

9 I have just a few specific questions for
10 you that are specific to my client.

11 Are you aware, Mr. Rannazzisi, that Giant
12 Eagle is a regional grocery store chain that has in-house
13 pharmacies?

14 A. I am aware of that, yes.

14:00:51

15 Q. And are you aware that it only operates in five
16 states?

17 A. I've -- I didn't do a background on it, no.

18 I don't know how many states you operate
19 in.

14:00:59

20 Q. Sir, are you aware that Giant Eagle doesn't have
21 any pharmacies or pharmacists in Virginia?

22 A. To be honest with you, I don't shop at Giant Eagle
23 so I wouldn't know that.

14:01:14

24 Q. Sir, you talked earlier about a presentation made
25 to the Virginia Board of Pharmacy, but you don't have any

1 reason to believe that any Giant Eagle pharmacists were
2 in attendance at that presentation, correct?

3 A. No, I don't.

4 Q. You've talked a lot in the last couple of days
14:01:28 5 about various enforcement powers and enforcement actions
6 that the DEA was involved with.

7 Do you remember that testimony?

8 A. Yes, ma'am.

9 Q. And I recall you testifying that you were not
14:01:37 10 personally involved with any actions against Giant Eagle,
11 but I'd like to ask you just a few questions about
12 whether you have any awareness of DEA enforcement actions
13 against Giant Eagle at all.

14 Okay?

14:01:47 15 A. Okay.

16 Q. So from your time at DEA, do you have any
17 recollection of any DEA enforcement actions at all
18 against Giant Eagle relating to opioid distribution or
19 dispensing?

14:02:03 20 A. During my tenure at DEA, no, I do not.

21 Q. Do you have any recollection of DEA issuing any
22 letters of reprimand to Giant Eagle relating to opioid
23 distribution or dispensing?

24 A. During my tenure, no, I do not.

14:02:20 25 Q. Do you have any recollection of DEA issuing any

1 orders to show cause against Giant Eagle in connection
2 with opioid distribution or dispensing?

3 A. During my tenure, I do not remember any orders to
4 show cause issued for Giant Eagle.

14:02:38 5 Q. And are you aware of any memorandums of
6 understanding between the DEA or Giant Eagle relating to
7 opioids?

8 A. No. I do not remember any.

9 Q. And are you aware of any settlement agreements
14:02:54 10 between DEA and Giant Eagle relating to opioid
11 distribution or dispensing?

12 A. No, I do not.

13 Q. Are you aware that the DEA has never even asserted
14 any public allegations against Giant Eagle alleging that
14:03:09 15 it was in violation of the Controlled Substances Act?

16 A. During my time at DEA I don't know of any time
17 where that's happened.

18 Q. And do you have any recollection of even a single
19 Giant Eagle store having its DEA registration revoked?

14:03:26 20 A. Again, during my time at DEA, no, I do not have any
21 recollection of that.

22 Q. Okay. So just to make sure that the jury has a
23 clear depiction, let's go through them just really
24 quickly.

14:03:39 25 So the number of times that you're aware of

1 Giant Eagle stores losing their DEA license is zero,
2 correct?

3 A. Yes. During my tenure at DEA, yes. That's
4 correct.

14:04:05 5 Q. Okay. And the number of settlement agreements
6 between DEA and Giant Eagle is zero, correct?

7 A. During my tenure, yes. That's correct.

8 Q. And the total number of enforcement actions that
9 you're aware of by DEA or DOJ against Giant Eagle is
14:04:29 10 zero, correct?

11 A. That would be correct, yes.

12 MS. FIEBIG: Thank you, Your Honor.

13 No further questions. We pass the witness.

14 THE COURT: Okay. I guess we have
14:04:44 15 redirect, Mr. Lanier.

16 And if any of the jurors have any
17 questions, please give them to Mr. Pitts.

18 REDIRECT EXAMINATION OF JOSEPH RANNAZZISI

19 BY MR. LANIER:

14:05:01 20 Q. All right. Mr. Rannazzisi, I don't have a lot, and
21 I don't have a roadmap because I didn't know I'd be going
22 that quick. I'm sorry.

23 A. Well, that's all right.

24 Q. All right. Here's what I'd like to do, though, I'm
14:05:16 25 going to cover the subjects with you that have been

1 covered.

2 We're going to start with the Giant Eagle
3 since they were the last up to bat, okay?

4 A. Yes, sir.

14:05:23 5 Q. You answered all of those questions only as to the
6 DEA and only as to during your tenure for Giant Eagle.

7 Fair?

8 A. That's absolutely correct.

9 Q. So you did not answer on behalf of the Ohio Board
14:05:36 10 of Pharmacy or anybody else.

11 True?

12 A. Absolutely.

13 Q. Next subject.

14 Income issues. When I started asking you
14:05:49 15 questions yesterday, were you very up front about the
16 money that you made at the very start of this case?

17 A. Yes, sir.

18 Q. All right. Am I paying you or is anybody paying
19 you to be here for this?

14:06:00 20 A. No, sir.

21 Q. Are you here as part of your obligation with the
22 Government and your obligation as an American citizen?

23 A. I'm obligated to see this through, so yes, I'm here
24 as --

14:06:15 25 Q. And by the same token, when you were on "60

1 Minutes," did you get paid for that?

2 MR. MAJORAS: Objection. Scope.

3 THE COURT: Overruled.

4 A. No, sir, I didn't get paid by "60 Minutes."

14:06:27 5 BY MR. LANIER:

6 Q. When you have been paid by, quote, unquote,
7 plaintiffs' lawyers, does that include, for example, the
8 legal team that works for the State of Ohio?

9 A. Yes.

14:06:39 10 Q. So you have actually rendered opinions in the Ohio
11 opioid litigation on behalf of Ohioans, is
12 that -- "Ohioans," I don't even know if that's the word;
13 the folks from Ohio.

14 Is that fair?

14:06:54 15 A. Yes.

16 Q. Okay. But I haven't asked you to come give those
17 opinions, have I?

18 A. No, sir, you haven't.

19 Q. I haven't asked you to give your analysis of the
14:07:03 20 counties in this case, have I?

21 A. No, sir, you haven't.

22 Q. Okay. What I've asked you to give, does the amount
23 of money that you've been -- by the way, have I ever
24 hired you for anything?

14:07:13 25 A. No, sir.

1 Q. Has my law firm ever hired you?

2 A. No, sir.

3 Q. And I'm sure there are other people on the teams
4 where their law firms have. I don't want to hide that
14:07:28 5 from anybody.

6 But are you being paid one red dime for
7 being here, other than reimbursed for your travel?

8 A. I was going to say, my mileage, but other than
9 that, no.

14:07:38 10 Q. Well, we're also paying for your hotel.

11 A. And my --

12 Q. And if you don't eat too richly, we're paying for
13 your meals, aren't we?

14 A. That I didn't know, but at the hotel, yes, now that
14:07:52 15 I know I'm going to go to Morton's tonight.

16 Q. Fair enough. Fair enough.

17 All right. Next subject. The DEA
18 regulations, I'm worried that perhaps something was
19 misspoken, and if I -- if my daughter has it right in her
14:08:10 20 notes, she has down that "The DEA regulations are
21 clear" -- and this is a quote -- "that the responsibility
22 for the proper prescribing and dispensing of controlled
23 substances is on the prescribing practitioner."

24 Is that your testimony?

14:08:30 25 A. Actually, that's -- in the Controlled Substances

1 Act, this has come up before, the act of handing a
2 prescription over to a patient is called dispensing.

3 So that dispensing is used differently.

4 If you look at the definition of

14:08:55 5 "Dispensing," it's the act of handing the prescription to
6 the patient as a doctor, and then also dispensing
7 medication from a pharmacy.

8 Q. Is there a corresponding responsibility on the
9 pharmacist in this regard?

14:09:14 10 A. Yes, there is.

11 Q. Can you make sure you're unequivocally clear on
12 what that means?

13 A. The pharmacist must determine, through his
14 professional judgment and analysis of the prescription,
14:09:27 15 that the prescription was valid, issued in a
16 legitimate -- issued for a legitimate medical purpose, in
17 the usual course of professional practice.

18 That ensures that the prescription is valid
19 and effective.

14:09:40 20 Q. All right. Next, you were asked questions about
21 the GAO report.

22 Remember that?

23 A. Yes, sir.

24 Q. And that was document number 1107, and you were
14:09:59 25 asked Page -- you were asked questions related to, for

1 example, Page 44, where the recommendations for executive
2 action included "Solicit input from distributors or
3 associations representing distributors and develop
4 additional guidance for distributors regarding their
14:10:26 5 roles and responsibilities for Suspicious Order
6 Monitoring and reporting."

7 Do you remember being asked those
8 questions?

9 A. Yes, sir.

14:10:36 10 Q. I'd like to read a couple of pages before that with
11 you to put it into context.

12 If you will look, please, at Page 23.

13 Page 23 says, in bold print on the side, "Most
14 registrants that interacted with DEA are generally
14:11:10 15 satisfied, although some distributors and pharmacies want
16 additional communication and guidance."

17 Then it's got the section again, "Most
18 registrants that interacted with DEA were generally
19 satisfied."

14:11:24 20 Would you then put all of that into context
21 for the jury and explain to them what you've brought out
22 of this GAO report from that?

23 A. Generally, most of the registrants we deal with
24 understand that there's -- there's ways to get
14:11:41 25 information if they do need it.

1 They could call their local offices. They
2 could get on the website. The website is, if you've
3 never been on the DEA website, it's unbelievable wealth
4 of information. They could call their local office.
14:11:56 5 They could look at -- they could look at different final
6 orders that were done.

7 But I think what that was saying was most
8 of the people were able to access the information that
9 they needed, and there were just a few that decided that
14:12:09 10 it was a little -- that they needed more information.

11 Q. In that regard, did you write your letters that we
12 referenced, the '06, '07, '08 letters, to give
13 information?

14 A. Yes, sir.

14:12:24 15 Q. Now, what I'd like to do is come back to this
16 subject in a moment, but first dance over to the
17 questions that were asked of you about the DEA and the
18 number of prescriptions that are legitimate.

19 Do you remember this document, Exhibit
14:12:44 20 1096?

21 A. Yes, sir.

22 Q. And you were directed, for the jury, to read that
23 paragraph that says, "To the contrary" -- hold on, there
24 we go -- "To the contrary, the agency recognizes that
14:13:06 25 nearly every prescription issued by a physician in the

1 United States is for a legitimate medical purpose."

2 Do you remember that?

3 A. Yes, sir.

4 Q. Here's what I'd like to do with you, please, sir.

14:13:17 5 I'd like to put this onto a timeline, and
6 this timeline is one where we make this make sense with
7 everything else you've testified to.

8 First of all, when was the Controlled
9 Substances Act initially into law?

14:13:48 10 A. 1970.

11 Q. And when do you, based upon your tenure and
12 experience, pinpoint the opioid crisis starting to ramp
13 up?

14 A. The late '90s.

14:14:12 15 Q. Late?

16 A. Yeah. Probably around 1997, '8 , '9, somewhere in
17 that area.

18 Q. And as the crisis began to ramp up, when did it
19 become a matter of concern to the DEA, based upon your
14:14:39 20 experience with the DEA and your tenure?

21 A. Well, as soon as we started seeing increases, it
22 became a concern.

23 So I would say right around the same time,
24 late '90s.

14:14:50 25 There's always been diversion, but

1 high-volume diversion right around the late '90s.

2 Q. All right. And then you've got this testimony in
3 the *Federal Register* that we looked at that counsel for
4 Walmart asked you about, of nearly -- "The agency
14:15:13 5 recognizes nearly every prescription is for a legitimate
6 medical purpose in the usual course."

7 What was the year of that testimony?

8 A. The *Federal Register* notice was 2016, if I'm not
9 mistaken.

14:15:28 10 Q. So as of 2006, is this testimony that nearly every
11 doctor okay, is that fair?

12 A. It -- it would be consistent, somewhat consistent
13 with what we were seeing at that point in time.

14 Q. Okay. Is this before the big advent of pill-mills?

14:16:00 15 A. Actually, this is before -- when that was written,
16 that was right during the Internet crisis, so we didn't
17 actually -- really the Internet crisis was not taken into
18 account in that scheme.

19 So you didn't have the Internet crisis and
14:16:24 20 it was before the pill-mill crisis happened.

21 Q. So the Internet crisis comes after that and the
22 pill-mill crisis comes after that?

23 A. Yes, sir.

24 Q. Now, when did you write your first letter where you
14:16:38 25 expressed concerns about how the distributors, the

1 wholesalers, the transporters, about how they were doing
2 business?

3 A. 2006.

4 Q. End of the year?

14:16:52 5 A. Yeah, it was close.

6 I think it was September of 2006.

7 Q. And we'll call that the "Joe Ran letter one."

8 And when did you write this second letter?

9 A. The second letter was in 2007.

14:17:11 10 The second letter was a duplication, but it
11 was, I think, in February of 2007.

12 Q. And when did you write your third letter?

13 A. December of 2007.

14 Q. And when did you begin the investigation into the
14:17:37 15 Walmart problems in Florida?

16 MR. MAJORAS: Objection. There's no
17 testimony about Walmart in Florida.

18 MR. LANIER: I'm sorry, Walgreens. I got
19 my "Wal-s" mixed up, Judge.

14:17:48 20 BY MR. LANIER:

21 Q. When did you start your investigation into the
22 Walgreens in Florida?

23 Walmart was San Diego.

24 MR. SWANSON: Objection, Your Honor.

14:17:57 25 Scope. I didn't stand up.

1 THE COURT: Overruled.

2 A. We started that investigation --

3 MR. BENNETT: Your Honor, may I be heard on
4 that issue?

14:18:08 5 MR. LANIER: Oh, if that's outside *Touhy*,
6 Your Honor, I'll pull the question down voluntarily and
7 I'll ask a different one.

8 THE COURT: All right. That's withdrawn.

9 BY MR. LANIER:

14:18:17 10 Q. Within the context of the ultimate decision on that
11 Walgreen case, there are some dates that y'all provided
12 publicly of the investigation and the problems.

13 What are those public dates, to put them
14 into this timeline, if you recall?

14:18:37 15 A. Yeah. There was -- there was settlements I think
16 occurred right around 2013, and so there would have been
17 a press release and there would have been something on
18 the Department of Justice website making notification of
19 it.

14:18:59 20 Q. All right. And before that, when was CVS, the CVS
21 *Holiday* case in Florida?

22 A. Between 2010 and 2012.

23 Q. When was the Walmart case in California?

24 A. 2009. I believe that's when the -- we had the
14:19:37 25 order to show cause.

1 Q. And then the dates on Walgreens?

2 A. At 2000 -- I think those are 2012 to 2013.

3 Q. Okay. Related subject.

4 You were asked about roles of distributors,
14:20:20 5 and whether or not they knew how to create their own
6 Suspicious Order Monitoring System.

7 Remember that?

8 A. Yes, sir.

9 Q. Did the defendants -- should the defendants have
14:20:38 10 known that they had that responsibility, at least going
11 back since they started distributing?

12 A. Yes. Absolutely.

13 Q. I mean, is that something that was hidden?

14 A. No, sir.

14:20:53 15 Q. And is it -- who is it up to -- let me ask it this
16 way.

17 Who is it up to to determine how they go
18 about doing that within their own business and their own
19 system?

14:21:08 20 A. It's -- it's up to the company, the distributor and
21 the company that operates the distributor.

22 Q. Now, if some of these companies just distributed to
23 themselves, as was pointed out to you in
24 cross-examination, how does that affect their access to
14:21:25 25 information?

1 A. Actually, it should be easier to gain information.

2 Outside -- or outside vendors or outside

3 distributors don't have that direct access to the

4 pharmacy prescription data. They don't have direct

14:21:40 5 access to -- they can't walk in and do an inspection of a

6 pharmacy, but because it's all the same corporation, that

7 impediment is not there, so they can just walk in

8 whenever they want and start pulling data out.

9 Q. Okay. And in that regard, you were asked questions

14:21:59 10 about whether or not the companies knew what indicated

11 diversion.

12 If you go back to the 2006 letter you sent

13 out -- and I pulled the Walgreens one -- but you said you

14 sent it to every distributor at the time, every

14:22:14 15 registrant?

16 A. Yes, sir.

17 Q. So we've got Plaintiffs' Exhibit 35.

18 In that letter, do you detail circumstances

19 that might indicate diversion?

14:22:22 20 A. Yes, sir.

21 Q. Did you give that information to everyone who was a

22 registered distributor?

23 A. Yes, sir.

24 Q. Is it consistent with what you have told us today?

14:22:34 25 A. Yes, sir.

1 Q. Did you also give explanations of how a distributor
2 seeking to determine whether a suspicious order is
3 indicative of diversion of controlled substances may wish
4 to inquire with the ordering pharmacy?

14:22:55 5 A. Yes, sir. That's in the letter.

6 Q. And again, these are for distributors, which are
7 the wholesalers, right?

8 A. Yes, sir.

9 Q. Okay. And you understand -- well, strike that.

14:23:08 10 Now, in that regard, there are different
11 systems that could be used. One of them is a system of
12 pickers and packers.

13 Do you know what that is?

14 A. Yes, sir.

14:23:26 15 Q. What is pickers and packers?

16 MR. SWANSON: Objection, Your Honor.

17 Beyond the scope and expert testimony.

18 MR. MAJORAS: Objection, Your Honor.

19 THE COURT: Yeah. I'll sustain that.

14:23:36 20 BY MR. LANIER:

21 Q. All right. Next subject. Let's talk quotas.

22 You were asked in regards to quotas this
23 question: "Does supply drive demand?"

24 Do you remember that question?

14:23:57 25 A. Yes, sir.

1 Q. And then you started talking or you were referenced
2 to the aggregate production quota.

3 A. Yes, sir.

4 Q. My question to you is explain, explain your answer
14:24:11 5 in a little more detail than you've been able to thus
6 far.

7 A. Well, the reason supply -- when you -- in the quota
8 context, when you're talking about quotas, supply doesn't
9 drive demand because just in that scope, it would be just
14:24:30 10 prescriptions, but quota is so much more than
11 prescriptions.

12 Quota, while there's a good portion that is
13 prescriptions, there's other things involved.

14 For instance, the quota takes into account
14:24:43 15 the studies and research they're doing, shelf studies,
16 new drug studies where they're trying to develop new
17 formulations or new delivery systems for those drugs.

18 It takes into import and export. It also
19 takes into quantities that are needed in case there's a
14:25:04 20 catastrophic event. It takes into account export
21 quantities, so if they're manufacturing and exporting.

22 You see, so quota is not just
23 prescriptions.

24 And that's one of the things, if you look
14:25:18 25 at 826, all the quota -- it's like a roadmap for what we

1 have to look at: Inventory position, we must keep a
2 certain inventory position in place in these companies.
3 It's a requirement under the law.

4 So we didn't have a lot of leeway with
14:25:37 5 quota. In fact, the reason quota was set up that way was
6 because if we didn't have enough quota in the system, and
7 there were shortages, patients wouldn't get their
8 medication.

9 Now, if it's a patient who's a drug-seeker,
14:25:54 10 no one cares. But if it's a patient who's in end-of-life
11 care, palliative care, hospice, oncology, we do care,
12 because that's important.

13 That's why quota is set up the way it is
14 and that's why Congress set up quota the way it is.

14:26:10 15 Q. All right. Next subject. You were asked some
16 specific questions about Lake and Trumbull County.

17 Do you remember those?

18 A. Yes, sir.

19 Q. And specifically by the Walmart attorney about
14:26:24 20 Walmart in Lake and Trumbull County.

21 Do you remember?

22 A. Yes.

23 Q. Here's my question.

24 Did the DEA regularly inspect every
14:26:31 25 pharmacy store in America for diversion?

1 A. No, sir.

2 The inspection of pharmacies, generally the
3 State Board, because that inspection is in line with the
4 practice of pharmacy.

14:26:51 5 So the State Board does the inspections.
6 That's not to say that DEA doesn't do inspections, but we
7 do very few because we rely on the state boards to do
8 those inspections.

9 Q. But we know what you found in Florida, we know what
14:27:06 10 you found in California, the jury's heard about what was
11 found in Massachusetts or Rhode Island, somewhere up
12 east, Maryland.

13 Is that routine for the DEA to just go
14 check out every pharmacy in every county, or how do you
14:27:25 15 find those that become the subject of a settlement
16 agreement?

17 A. If we, when we do inspections, be it a regular
18 inspection or an Immediate Suspension Order or an
19 administrative inspection warrant, those are done based
14:27:43 20 on information that we've received or developed, and
21 that's why we're there.

22 Q. In that regard, do you find that at least where big
23 national chains or where large regional chains are
24 concerned, do the national or uber regional policies
14:28:07 25 affect the local stores?

1 MR. SWANSON: Objection, Your Honor.

2 MR. MAJORAS: Objection.

3 MR. SWANSON: Objection.

4 MR. MAJORAS: Objection to scope. He's not

14:28:19 5 talked about policies.

6 MR. LANIER: He was asked specifically

7 about Lake and Trumbull.

8 THE COURT: Overruled.

9 BY MR. LANIER:

14:28:24 10 Q. Do the national policies affect the local stores?

11 A. Absolutely.

12 Q. Did the DEA take that into account when it entered
13 into agreements with these chain pharmacies to affect
14 their national behavior?

14:28:39 15 A. During -- during the time I was at DEA, when we
16 looked at settlements or, you know, we looked to the
17 corporation, and to ensure that they would -- they would
18 implement policy, they would implement procedures that
19 would trickle down to the pharmacies so to ensure their
14:29:00 20 compliance at the pharmacy level.

21 Q. Next set of questions.

22 You were asked some questions about sources
23 of pills.

24 I want to start with the one about friends
14:29:12 25 and family as a source -- hold on, there we go -- of

1 medicines.

2 You were asked about specifically some
3 testimony you gave on that in West Virginia.

4 Do you remember that?

14:29:23 5 A. Yes, sir.

6 Q. I would like you to explain, please, the reasons
7 for your answer, and let's get your answer back on the
8 screen.

9 You were asked, "You agree with me the most
14:29:40 10 common, most frequent method of obtaining a
11 pharmaceutical controlled substance for nonmedical use is
12 through friends and family for free?"

13 You said "No." Then you said "I -- repeat
14 that question again. I want to make sure I got that one
14:29:54 15 right."

16 And then what you were read today, "Sure.
17 Of course, the most frequent method of obtaining a
18 pharmaceutical controlled substance for nonmedical use is
19 friends and family for free?"

14:30:08 20 Your answer was: "Yes. I've testified to
21 that based on the opinion of the administration, but that
22 was not my own personal view."

23 Please explain what you meant by that, sir.

24 A. At a national level when I was at DEA, I was
14:30:29 25 looking at volumes of drugs -- volume of drugs, and the

1 volume of drugs coming out of some of these pharmacies
2 was just outrageous.

3 The idea is that that's the way people were
4 getting drugs, just passing it to and from, does not make
14:30:44 5 sense based on what I was seeing.

6 When we -- when we look at controlled
7 substances and we look at how they arrive in the
8 community, you just don't go to the medicine cabinet,
9 open the medicine cabinet, and there's controlled
14:30:59 10 substances there, just like you don't go to the
11 refrigerator and open it, and there's a bottle of milk
12 there. It's got to get there somehow.

13 It was getting there in many cases because
14 of the volume that was leaving the pharmacies, and the
14:31:12 15 volume that was leaving the pharmacies based on
16 illegitimate and illegal prescriptions was huge.

17 So to say that that's where, you know,
18 that's the most common or most frequent method is -- it
19 doesn't do the whole operation of diversion, it doesn't
14:31:33 20 do it justice, because diversion occurs in large volumes.
21 It doesn't occur one tablet after another.

22 So that's why I didn't agree with that.

23 Q. On a related matter, then, you defined rogue
24 pharmacies as "Acting outside the law."

14:31:48 25 Fair?

1 A. Yes.

2 Q. Based upon your tenure and experience at the FDA
3 then, would that include Walmart?

4 A. Based on the cases that I saw, well, based on the
14:32:05 5 one case that we did the order to show cause on, yes,
6 they operated outside the law.

7 Q. How about Walgreens?

8 MR. SWANSON: Objection, Your Honor.

9 THE COURT: Overruled.

14:32:15 10 A. Yes. Based on the case, the 2011, '12, '13 case,
11 yes.

12 Q. How about CVS?

13 MR. DELINSKY: Objection, Your Honor.

14 THE COURT: Overruled.

14:32:24 15 A. Yes. Based on *Holiday*, of course.

16 Q. Last subject. You spoke about documentation and
17 what's required and what's not.

18 You began, and I'm including this in, you
19 took the resolution slide and you were asked a question
14:32:47 20 about "It does not require a call to the practitioner for
21 every controlled substance prescription."

22 Do you remember that?

23 A. Yes.

24 Q. You were not opportuned to explain that. I would
14:33:05 25 like you to have a chance to explain.

1 What do you mean?

2 A. Sure. There are -- there are prescriptions that
3 pharmacists see every day that they know are correct.
4 For instance, I always use this as an example: You have
14:33:21 5 a child on Phenobarbital because he's epileptic, he's an
6 epileptic, okay.

7 The pharmacist knows what that
8 Phenobarbital is for and he knows the patient. He's not
9 going to call the doctor unless the dose is so
14:33:34 10 ridiculously high that he thinks that patient's harmed.

11 But if the patient is stabilized on that
12 medication, then the pharmacist doesn't need to call that
13 particular doctor.

14 So what we're saying is, yeah, there are
14:33:47 15 circumstances where you don't have to call because in
16 your professional judgment, if you believe that that drug
17 is not being diverted or if that drug was not
18 issued -- is issued for a legitimate medical purpose that
19 you could see on the face of the prescription, that's
14:34:00 20 fine.

21 Same thing with an elderly patient in a
22 nursing home that's taking a small amount of a hypnotic
23 like temazepam. Same concept. Do you think the
24 pharmacist is going to call? He knows the doctor, he's
14:34:12 25 not going to waste the doctor's time, you know,

1 dispensing that medication because there's just some
2 things that the pharmacist knows are correct.

3 So that's why we didn't include it for
4 every controlled substance prescription.

14:34:26 5 Q. But when it comes to these, is it still important
6 that the pharmacists document their knowledge and what
7 they do?

8 A. Yes, absolutely.

9 Q. And you were asked is the documentation language in
14:34:42 10 the Controlled Substances Act, my question is on the need
11 to document, must pharmacies follow the standard protocol
12 on documentation?

13 A. I'm sorry, when you say standard protocol, are you
14 talking about pharmacy practice protocols?

14:35:02 15 Q. Yes, sir.

16 A. Yes.

17 Q. Nobody gets a free pass because of the Controlled
18 Substances Act?

19 A. No.

14:35:12 20 Q. Did you teach pharmacists, when you gave those
21 lectures on behalf of the DEA, the need to document?

22 A. Yes. Doctors and practitioners.

23 Q. Why?

24 A. Because on both doctors and practitioners, your
14:35:31 25 documentation is why you did something.

1 For a doctor, when he prescribes or he or
2 she prescribes a certain drug, there's got to be some
3 type of -- some type of documentation showing why,
4 what -- what's this patient's ailment, why is -- why does
14:35:50 5 he need that drug?

6 It's the same concept with the pharmacist.
7 If the pharmacist looks at a prescription and makes a
8 decision that there's a problem with that prescription,
9 the dose is too high, it interferes with another drug
14:36:03 10 he's taking, he calls the doctor, and the doctor gives
11 him a reason why that's a reasonable excuse, it should be
12 put down, it should be documented.

13 It's for the patient's safety as well as
14 the pharmacist's.

14:36:18 15 Q. Okay. You were asked, well, does the manual say
16 that every red flag needs to be documented, the
17 prescription -- *The Practitioner's Manual*.

18 Does this manual contain every detail
19 someone needs to know to practice pharmacy?

14:36:31 20 A. No, sir.

21 Q. Is the need to document something that you think
22 needs to be in a manual?

23 A. No, sir.

24 Q. Why not?

14:36:38 25 A. Because, again, it's a requirement under state law.

1 MR. LANIER: Thank you, Your Honor.

2 That's all I have.

3 Pass the witness.

4 THE COURT: Okay. If there's any, any

14:36:49 5 redirect.

6 MR. MAJORAS: Yes, sir.

7 THE COURT: Okay. Mr. Majoras for Walmart.

8 RECROSS-EXAMINATION OF JOSEPH RANNAZZISI

9 BY MR. MAJORAS:

14:37:22 10 Q. I have just a few questions related to the timeline
11 that Mr. Lanier just used.

12 Isn't it true, sir, that you and the DEA
13 continued to make official public statements well after
14 2006 that 99 percent of prescribers were perfect?

14:37:43 15 A. That statement was probably made, yeah. I don't
16 have all the statements in front of me, but I'm sure
17 somebody at DEA made that statement.

18 Q. Well, do you recall your testimony in March of 2012
19 to the House of Representatives, the federal House of
14:37:57 20 Representatives, in which you made that statement about
21 99 percent of the doctors are perfect?

22 A. Could -- again, do you have -- is that in my book
23 here?

24 Q. Sure. I could bring that up. Thanks for asking.

14:38:09 25 A. Great. Thank you.

1 Q. If we could look at Exhibit, Defendants' MDL 01226.

2 If we look at just the title of this
3 document -- are you with me, sir? I don't want to jump
4 ahead.

14:38:31 5 MR. MAJORAS: No, it's not.

6 A. Yeah, I'm looking at it on the screen.

7 MR. MAJORAS: So when I said "No, it's
8 not," I was responding to Mr. Lanier just now.

9 THE WITNESS: Oh, I'm sorry.

14:38:34 10 MR. MAJORAS: That's all right, just so
11 we're clear for the record.

12 Back to you, Mr. Rannazzisi.

13 BY MR. MAJORAS:

14 Q. So, Mr. Rannazzisi, you recall giving testimony to
14:38:52 15 the Subcommittee on Commerce, Manufacturing and Trade of
16 the Committee on Energy and Commerce, House of
17 Representatives, on March 1st, 2012?

18 A. Yes.

19 Q. Why don't we turn to Page 49 of this document,
14:39:08 20 please? And if we blow it up.

21 Mr. Rannazzisi, this is your testimony
22 responding to Mr. Harper of Congress, is that right?

23 A. Could I just look at the question beforehand?

24 Q. Sure.

14:39:35 25 A. Thank you.

1 Q. Take your time. You --

2 A. Yeah.

3 (Pause.)

4 A. Okay.

14:40:20 5 Q. Sir, and I'll read this into the record. You can
6 tell me if I read it correctly.

7 Your response was, "I think the
8 requirements that are in place right now for these drugs
9 are fine if the individuals within the supply chain and
14:40:32 10 health care delivery system would follow them. The
11 problem is that the doctors continue, not all doctors, 99
12 percent of the doctors are perfect. It is that small
13 percentage of doctors that just don't want to fulfill
14 their obligation. What they do is prescribe for
14:40:46 15 illegitimate purposes, or they don't make a medical
16 determination. They just go with patient-directed
17 prescribing, which is just wrong. I think that if
18 everybody within that supply chain would just police each
19 other, we wouldn't have that problem."

14:41:00 20 Is that your testimony, sir? Did I read
21 that correctly?

22 A. Yes, and I -- that testimony was done, looking
23 at --

24 Q. My only question was whether or not that was your
14:41:14 25 testimony.

1 A. That was my testimony, yes.

2 Q. And earlier, Mr. Lanier showed you a timeline, and
3 he was drawing on it.

4 Mr. Pitts, if we could bring up the screen.

14:41:27 5 And I don't mean any offense here, your
6 name is rather long, so is mine, but I'll use the same
7 abbreviation Mr. Lanier used.

8 Would you agree that in this timeline, if I
9 were to put your testimony, it would go approximately
14:41:40 10 here, and it would be -- if we could bring up the
11 monitor, please. Thank you.

12 So if we were to put it on the timeline,
13 and I'm not very good at drawing lines, but we'd have
14 Mr. Rannazzisi testified to Congress "99 percent
14:42:20 15 perfect," would you agree that that's the time, the
16 period would fit in the timeline Mr. Lanier drew?

17 A. Yes. It's about right.

18 MR. MAJORAS: No further questions, Your
19 Honor.

14:42:31 20 MR. LANIER: Your Honor, could I ask one
21 set of redirects, just on that, please?

22 THE COURT: Yes.

23 MR. LANIER: Thank you.

24 THE COURT: No, I'm just going to see, any
14:42:40 25 other defendants on recross?

1 MS. FIEBIG: No, Your Honor.

2 MR. SWANSON: No, Your Honor.

3 MR. DELINSKY: Nothing further, Your Honor.

4 THE COURT: Okay. I will only allow a few
14:42:50 5 rounds.

6 MR. LANIER: Very briefly.

7 THE COURT: No. If I start with this one,
8 we'll never end.

9 So thank you, sir. You may be excused.

14:43:00 10 (Witness excused).

11 MR. WEINBERGER: Your Honor, it's quarter
12 to 3:00. Do you want to get started right away, or do
13 you want to --

14 THE COURT: Well, maybe we'll just take our
14:43:53 15 break a little early so we don't break with the witness
16 right at the beginning.

17 So we'll take a 15-minute break. Usual
18 admonitions.

19 (Jury out.)

14:46:44 20 (Recess taken.)

21 (Jury in.)

22 THE COURT: Okay. Please be seated, ladies
23 and gentlemen.

24 All right. Mr. Lanier, you may call your
15:06:11 25 next witness, please.

1 MR. WEINBERGER: If you don't mind --

2 THE COURT: Mr. Weinberger, sorry.

3 MR. WEINBERGER: -- it's going to be me.

4 I'm going to call Mr. Brian Joyce as if

15:06:21 5 upon cross-examination and an adverse witness.

6 THE COURT: Okay. Mr. Joyce, if you could

7 raise your right hand, sir.

8 BRIAN JOYCE,

9 of lawful age, a witness called by the Plaintiffs,

15:06:53 10 being first duly sworn, was examined

11 and testified as follows:

12 THE COURT: Thank you.

13 You may remove your mask while testifying.

14 MR. WEINBERGER: May I proceed, Your Honor?

15:07:09 15 THE COURT: Yes, Mr. Weinberger.

16 CROSS-EXAMINATION OF BRIAN JOYCE

17 BY MR. WEINBERGER:

18 Q. Please state your full name.

19 A. Brian M. Joyce.

15:07:14 20 Q. Mr. Joyce, are you currently employed?

21 A. No.

22 Q. Were you employed at Walgreens?

23 A. I was.

24 Q. When did you stop your employment?

15:07:26 25 A. I retired on March 4th of this year.

1 Q. Congratulations.

2 A. Thank you.

3 Q. Before your retirement, you had spent a number of
4 years working for Walgreens, correct?

15:07:38 5 A. Yes, about 16.

6 Q. Right. You started there in 2000 and --

7 A. '4.

8 Q. -- '4? November of 2004, right?

9 A. Yes.

15:07:56 10 Q. I had an opportunity to take your deposition by
11 Zoom on February 26th, 2021 when you were still working
12 for Walgreens, correct?

13 A. Correct.

14 Q. Are you represented by Walgreens' lawyers today?

15:08:13 15 A. Yes.

16 Q. Did you meet with them to prepare yourself for
17 today's testimony?

18 A. Yes.

19 Q. On how many occasions?

15:08:22 20 A. Like on the phone, or in person?

21 In person, just yesterday. But on the
22 phone, several meetings since I was subpoenaed probably a
23 month ago, so two or three times.

24 Q. Okay. About how many hours did you spend in
15:08:38 25 preparation with your lawyers?

1 MR. STOFFELMAYR: Judge, I'm going to
2 object.

3 This is improper, whether he met with
4 lawyers to prepare for his testimony, as every witness
15:08:45 5 does.

6 THE COURT: Well, no suggestion it's
7 improper, but he can ask how long he spent.

8 BY MR. WEINBERGER:

9 Q. How long?

15:08:53 10 A. In total?

11 Q. Yes.

12 A. Five hours maybe.

13 Q. At the time I took your deposition on February
14 26th, 2021, we went through a number of documents, didn't
15:09:06 15 we?

16 A. Yes.

17 Q. Have you seen any other documents
18 associated -- associated with your employment at
19 Walgreens since that date?

15:09:16 20 A. I don't believe so.

21 Q. Okay. You are appearing here today pursuant to a
22 subpoena that was issued upon you, correct?

23 A. Yes.

24 Q. And you live in Girard, Ohio; correct?

15:09:32 25 A. Which is Youngstown, north of Youngstown just a

1 bit.

2 Q. Well, it's in Trumbull County, isn't it?

3 A. It is.

4 Q. Okay. And you know that the plaintiffs in this

15:09:39 5 case are the counties of Trumbull, where you live, and

6 the county of Lake. You know where Lake County is, don't

7 you?

8 A. Sure do.

9 Q. Painesville is the -- is the county seat there,

15:09:53 10 right?

11 A. Yeah, Madison, sure.

12 Q. And you have a BS degree from the University of

13 Toledo, a degree in Pharmacy, correct?

14 A. Right.

15:10:10 15 Q. You got that degree in 1980?

16 A. I graduated in December of 1980.

17 Q. And you got your pharmacy license in 1981, right?

18 A. March 1st.

19 Q. And you were employed elsewhere other than

15:10:22 20 Walgreens, including Rite Aid, right?

21 A. Correct.

22 Q. And you started your employment, as you told us, at

23 Walgreens in November of 2004.

24 Right?

15:10:33 25 A. Yes.

1 Q. And then you worked as a -- you worked as a
2 pharmacy manager there from November of 2004 until
3 December of 2006, right?

4 A. Not -- no, not really.

15:10:45 5 I think it was maybe March or April of 2005
6 through December 25th, 2006.

7 Q. As pharmacy manager?

8 A. Correct.

9 Q. And then you moved to a position as pharmacy
15:10:59 10 supervisor?

11 A. Yes.

12 Q. And that was from December of 2006 until April of
13 2015, correct?

14 A. Sounds right, yep.

15:11:08 15 Q. And then you were district manager until you
16 retired?

17 A. Correct.

18 Q. April, '15 until you retired in March, right?

19 A. Correct.

15:11:20 20 Q. And while you were working as district manager, you
21 were in charge of six Trumbull County stores of
22 Walgreens, right?

23 A. Five or six, yeah.

24 Q. Right. So were they store number -- stores number
15:11:42 25 5549, 6888, 9077, 9669, 10569, and 1170?

1 A. Yes.

2 Q. And you were also in charge of seven stores in
3 Mahoning County, right?

4 A. Yeah.

15:12:01 5 Q. So for a total of six and seven, that would be 13
6 stores?

7 A. I think I had 12 stores. I think maybe there was
8 six in Mahoning County.

9 Q. Okay. Now, during that time you were part of what
15:12:15 10 Walgreens calls Market Number 29, right?

11 A. For part of the time, yes.

12 Q. And I think sometimes, including presently, that's
13 known as Region 29, right?

14 A. No. Market 29 was my little chunk of Ohio with
15:12:35 15 Pennsylvania and New Jersey, and then I think we are in
16 Region 1. Region 1 was like the east coast.

17 Q. Okay. So we'll talk about Market 29 and some
18 documents related to that later, a little later on in
19 your testimony.

15:12:53 20 So in managing 13 or 14 Walgreen stores as
21 district manager, you were in charged -- in charge of
22 both the front end of the store, the retail space, as
23 well as the pharmacy.

24 Right?

15:13:11 25 A. Correct.

1 Q. And when you were pharmacy supervisor, before 2015,
2 you were in charge of actually the pharmacies only,
3 right?

4 A. Correct.

15:13:23 5 Q. And so you've had an opportunity to supervise in
6 both of those roles a number of pharmacists, correct?

7 A. Many, many pharmacists, yes.

8 Q. So how many on average pharmacists would you say
9 that an average store in your region employs?

15:13:46 10 A. Depending upon what kind of store it was, for
11 instance, if it's -- if the midnight store that has three
12 shifts, they would have obviously at least three
13 pharmacists, plus folks to fill in for days off.

14 So they would have close to five
15:14:00 15 pharmacists in a store like that.

16 And at other stores, you know,
17 two-and-a-half, three pharmacists.

18 Q. And would the pharmacists transfer from
19 store-to-store within your region?

15:14:15 20 A. So the pharmacy managers kind of stayed put for the
21 most part. Sometimes we'd move them or they'd want
22 moved. Staff pharmacists pretty much stayed at one
23 store, and again, they would move sometimes if they got
24 promoted to pharmacy manager.

15:14:30 25 And then we had floaters that, you know,

1 worked at different locations to cover days off, and so
2 forth.

3 But we tried to stick those folks in the
4 same, you know, two or three stores.

15:14:43 5 Q. So your job as a district manager was to make sure
6 that the stores were running to their full potential,
7 including hiring and supervising and training the
8 employees, right?

9 A. I did some training.

15:15:02 10 I had folks that helped me train. I had
11 certain pharmacy managers I'd stick new pharmacists with
12 for training, and then I would do some of it as well.

13 Q. And you are a registered -- or before your
14 retirement you were --

15:15:19 15 A. I'm still a registered pharmacist.

16 Q. Okay. So during this whole time we're talking
17 about at Walgreens you were a registered pharmacist,
18 correct?

19 A. The entire time.

15:15:27 20 Q. And while you had other managers directly
21 supervising the pharmacists, it really was part of your
22 role to make sure that they were operating correctly and
23 within the law, right?

24 A. Sure.

15:15:44 25 Q. Now, during the course of your career at Walgreens,

1 have you ever attended any diversion conferences put on
2 by the DEA?

3 A. I don't believe I have, no.

4 Q. Have you ever seen any publications of the DEA
15:16:11 5 regarding the issue of diversion?

6 A. There might be articles in the Ohio Pharmacists
7 Association that would have some of that information, but
8 I don't remember seeing a specific publication put out by
9 the DEA.

15:16:25 10 Q. Now, in your -- in your job working for Walgreens,
11 you don't use the term "Red flags," do you?

12 A. I haven't, no.

13 Q. Did you say "by habit"?

14 A. I haven't.

15:16:43 15 Q. You haven't?

16 A. Correct.

17 Q. So you haven't used the term "Red flags" either
18 generally or in relation to investigating opioid
19 prescriptions?

15:16:57 20 A. I use the term "Concerns" or "Issues."

21 Q. Right. You don't use the term "Red flags" because
22 you think that has a negative connotation, true?

23 A. Yeah. Because not all red flags are really red
24 flags. They are yellow flags, they need investigated.

15:17:15 25 Q. Right. So when you say negative connotation,

1 you're meaning -- what you mean to say is that if you use
2 the term "Red flags," it means there's automatically
3 something wrong with that prescription, right?

4 A. Yes.

15:17:25 5 Q. It doesn't mean to you that that's something that's
6 a prescription that has a red flag where you should stop
7 and act with caution and be vigilant to investigate the
8 red flag?

9 You don't use that terminology that way,
15:17:45 10 correct?

11 A. I don't. If you want me to I will, but I don't as
12 a practice.

13 Q. So when you've had an opportunity to interact with
14 pharmacists since 2006, when you had a supervisory role,
15:18:05 15 you never used the term "Red flags."

16 True?

17 A. I don't know if I never used.

18 I would refer to these things as concerns
19 or issues that need looked into, a phone call or talking
15:18:21 20 to the patient, and getting some more information.

21 Q. So you understand that you have to follow the
22 policies of Walgreen or you had to follow them?

23 A. Yeah. I was an employee of Walgreens, so yeah.

24 Q. And that included the dispensing of opioids,
15:18:39 25 correct?

1 A. Yes.

2 Q. And that included investigating prescriptions of
3 opioids that might have red flags, right?

4 A. Yes.

15:18:50 5 Q. And when you would supervise your employees in
6 regard to that policy, you never used the term "Red
7 flag," did you?

8 A. I'm not saying I never used it.

9 In general -- in general terms I didn't use
15:19:07 10 it. I used the word "problems" or "concerns" or
11 "issues."

12 Q. So your responsibility included assuring that the
13 Walgreens pharmacist who worked at the stores that you
14 managed and supervised complied with all the federal and
15:19:24 15 state laws regarding controlled substances dispensing,
16 correct?

17 A. Yes.

18 Q. Now, do you know, have you heard of the name Joseph
19 Rannazzisi?

15:19:38 20 A. Yeah, I may have heard it before.

21 I don't know who he is. I don't -- I never
22 met the guy or --

23 Q. You know him to have been the Associate Director in
24 charge of Diversion Control at the DEA?

15:19:55 25 A. No.

1 Q. At the corporate level, there was a Walgreens
2 department known as Corporate Pharmacy Integrity that was
3 supposed to monitor and ensure compliance with the
4 Controlled Substances Act.

15:20:11 5 True?

6 A. Yeah. Tasha Polster I think was the head of that
7 department.

8 Q. Right. And I was going to ask you about Tasha
9 Polster.

15:20:21 10 Did you have interactions with her over the
11 years?

12 A. Occasionally, occasionally.

13 Q. I'm sorry?

14 A. Occasionally.

15:20:28 15 Q. So I want to talk to you now about the concept of
16 corresponding responsibility.

17 A. Okay.

18 Q. You're familiar with that term?

19 A. Sure.

15:20:40 20 Q. In this courtroom, over the last 10 days, the jury
21 has heard of the corresponding responsibility of
22 Walgreens and its pharmacists, and we've gone over the
23 Controlled Substances Act and its regulations.

24 You would agree that Walgreens is in the
15:21:00 25 business of dispensing prescription opioids.

1 True?

2 A. All prescription drugs.

3 Q. Well, prescription opioids are part -- is part of
4 that, right?

15:21:12 5 A. Yeah, but that's not our entire business.

6 The business is dispensing any
7 prescription, controlled, uncontrolled.

8 Q. So but with respect to controlled substances such
9 as opioids, the manner in which those are dispensed is
10 regulated by the Controlled Substances Act and its
11 regulations.

12 Correct?

13 A. Yes.

14 Q. And are you aware of the fact that for many of the
15 years that Walgreens was in the business of dispensing
16 opioids, it was also in the business of distributing
17 opioids to themselves bought directly from manufacturers?

18 A. Yes.

19 Q. And so as distributors, as a distributor, you know
15:22:04 20 that Walgreens also has certain responsibilities under
21 the Controlled Substances Act.

22 True?

23 A. I don't know that. I mean, I don't know the laws
24 for wholesalers, no.

15:22:14 25 Q. Well, from time to time you would be in charge of

1 placing orders to the distribution centers of Walgreens
2 on behalf of your pharmacies, right?

3 A. No.

4 Q. You never did that?

15:22:28 5 A. I didn't place orders, no.

6 Q. How about pharmacists who worked under your
7 supervision?

8 A. Sure. They did the ordering.

9 Q. And when they placed orders from the distribution
15:22:42 10 center of Walgreens, do you know whether or not they knew
11 what the obligations were in placing that order under the
12 Controlled Substances Act?

13 A. It's the responsibility of a pharmacist to know the
14 federal and state law, so yes.

15:22:58 15 Q. Okay. Well, didn't you just tell us that you don't
16 know what the laws are applicable to distribution
17 of opioids?

18 A. You're talking about what the laws are for the
19 wholesaler? No, I don't -- I don't really know that.

15:23:12 20 Q. As dispensers, the filling of prescriptions and the
21 sale of those prescriptions to patients or to customers,
22 Walgreens was required to act as the last line of defense
23 to the dispensing of opioids.

24 Correct?

15:23:36 25 A. Yes.

1 Q. And the last line of defense is a shorthand
2 description for the corresponding responsibility of a
3 pharmacist.

4 Right?

15:23:47 5 A. Sure.

6 Q. The -- that corresponding responsibility of
7 pharmacists and pharmacies is particularly important when
8 you're dispensing opioids.

9 Correct?

15:24:03 10 A. It's important for every prescription, opioids for
11 sure.

12 Q. Well, particularly with respect to opioids,
13 Mr. Joyce, those drugs are potentially dangerous to the
14 patient and to the community.

15:24:19 15 True?

16 A. Sure they are. They're addictive, sure.

17 Q. Opioids can often lead to diversion and addiction.

18 True?

19 A. They can, among other drugs, sure.

15:24:30 20 Q. And you don't understand "diversion" to mean
21 prescriptions not written -- it could be prescriptions
22 not written by a doctor or a fraudulent prescription,
23 right?

24 A. Sure.

15:24:43 25 Q. Or it could mean prescriptions written by a doctor

1 where the pills end up in the hands of someone who's not
2 a patient of the doctor.

3 True?

4 A. Um-hmm. That's diversion, yep.

15:24:56 5 Q. And you're aware as a pharmacist that people who
6 take opioid pills, whether it's the actual patient who
7 got the dispensed pills or someone who was not a patient
8 but is taking the pills, are at risk for addiction,
9 right?

15:25:13 10 A. Sure.

11 Q. And addiction can lead to all sorts of other
12 problems, including problems with the law.

13 True?

14 A. Yeah. Sure.

15:25:25 15 Q. Problems within a family?

16 A. Sure. Saw it many times.

17 Q. Problems in the community?

18 A. Yep.

19 Q. And when there's a lot of opioid pill diversion
15:25:37 20 occurring within a community, it directly affects the
21 health and safety and welfare of the communities in which
22 that is occurring?

23 A. I would agree.

24 Q. And you live in Trumbull County, we've established
15:25:54 25 that, right?

1 A. Yep.

2 Q. And Trumbull County and this region have seen the
3 effects of the opioid pill diversion directly.

4 True?

15:26:07 5 A. I would say so.

6 Q. And have you experienced firsthand the opioid
7 epidemic caused by diversion?

8 A. Well, you see prescriptions written by doctors that
9 you refuse, that you don't think are legitimate.

15:26:26 10 You read about folks, you know their
11 brother or their parents that have overdosed. You look
12 at the obituaries and, you know, three out of 10 are for
13 an 18-year-old kid, so sure.

14 Q. So would you agree that any pharmacist working at
15:26:47 15 Walgreens in your district should be well-aware of the
16 problems associated with opioid pill --

17 A. Every pharmacist in the State of Ohio is aware of
18 the opioid problems.

19 Q. And would you agree that the knowledge of the
15:27:09 20 opioid pill epidemic should have an influence on
21 Walgreens dispensing policies?

22 A. Well, I mean, I think you've always got to be
23 careful.

24 We're not, you know, in the '80s when I was
15:27:27 25 a pharmacist, in the '90s when I was a pharmacist, there

1 were always issues. Obviously we didn't have OxyContin
2 then, but it was when I first got out of pharmacy school
3 it seemed to be amphetamines and Seconal that were the
4 drug of choice, or Quaaludes that were the drug of choice
15:27:45 5 for diversion, and then that moved on to Percodan, and
6 then that graduated to Dilaudid, and then that kind of
7 morphed into OxyContin.

8 So there's always been opioid issues in the
9 community.

15:28:00 10 Q. Well, would you agree that as the risk to the
11 people and to the communities associated with opioid
12 diversion, use and diversion, increases, the degree of
13 vigilance that pharmacists have to utilize with respect
14 to those prescriptions increases?

15:28:23 15 A. I think you've always got to be --

16 MR. STOFFELMAYR: Objection to form, Your
17 Honor.

18 THE COURT: Overruled.

19 THE WITNESS: I can answer now?

15:28:36 20 MR. WEINBERGER: Yes, you can.

21 THE COURT: You may answer, sir.

22 A. Yeah, so I think you've always got to be vigilant
23 with controls, with drugs that aren't controlled; with
24 pediatrics, little kids that come in with extremely low
15:28:47 25 doses of medication; with heart medications like Lanoxin,

1 very poisonous if you put the wrong directions on the
2 bottle.

3 You got to be on your game every
4 prescription that's handed to you.

15:29:04 5 BY MR. WEINBERGER:

6 Q. Well, let's take a look at and discuss together
7 what Walgreens knew about prescription drug abuse.

8 Would you give the witness Exhibit P 20808.

9 Do you have that exhibit in front of you?

15:29:50 10 A. I do.

11 Q. We discussed this exhibit at your deposition,
12 didn't we?

13 A. I think so.

14 Q. Okay. So P 0208, the first page, is an e-mail that
15 a John Colaizzi --

16 A. Colaizzi.

17 Q. -- Colaizzi sent to you on April 1st, 2013,
18 attaching this drug abuse PowerPoint.

19 True?

15:30:22 20 A. Looks like it, yeah.

21 Q. And you had asked him for that drug abuse
22 PowerPoint, and he responded with the e-mail and a copy
23 of the PowerPoint, right?

24 A. Yes.

15:30:38 25 Q. This is a PowerPoint published by Walgreens, right?

1 A. Yeah. I think John made it up but, yeah, we made
2 it at Walgreens.

3 Q. And this is one of many PowerPoints that you've
4 seen over the years while an employee at Walgreens,
15:30:55 5 right?

6 A. I've seen lots of PowerPoints over 16 years with
7 Walgreens, right.

8 Q. Right. Let's back up for a second, and let's talk
9 a little bit about communications between Walgreen and
15:31:05 10 its employees and a district manager such as yourself.

11 There are many ways in which Walgreens
12 corporate communicates with you, right?

13 A. Well, pretty much e-mails.

14 Q. Right. E-mails.

15:31:21 15 How about webinars?

16 A. Occasionally.

17 Q. How about do you know what a PPL is?

18 A. Yeah. PeoplePlus Learning, yeah.

19 Q. PeoplePlus Learning, is it?

15:31:35 20 And do you participate in those?

21 A. Everyone does.

22 Q. So that includes you?

23 A. That includes me.

24 Q. Right. And so this PowerPoint, which is entitled
15:31:53 25 "Prescription drug abuse," goes on to, on the next page,

1 describe what prescription drug abuse is.

2 It says, "When someone takes a medication
3 that someone -- that was prescribed for someone else or
4 takes their own prescription in a way different from what
15:32:13 5 was originally prescribed."

6 Do you agree with that definition?

7 A. Sure.

8 Q. And then the next page goes on to talk about types
9 of prescription drug abuse.

15:32:26 10 One is "Taking a medication to get high."

11 You agree with that?

12 A. Yeah. Yep.

13 Q. "Taking someone else's prescription, either because
14 they shared it with you or you stole it."

15:32:38 15 Do you agree with that?

16 A. I would.

17 Q. "Taking a prescription medication in a way other
18 than prescribed."

19 Do you agree with that?

15:32:47 20 A. Sure.

21 Q. And then the next page talks about common drugs of
22 abuse.

23 And the first category is pain medication.

24 Do you see that?

15:33:01 25 A. Um-hmm.

1 Q. And the PowerPoint uses several examples. One is
2 OxyContin or Oxycodone, right?

3 A. Um-hmm.

4 Q. Yes?

15:33:11 5 A. Yes.

6 Q. Or Percocet?

7 A. Percodan or Percocet.

8 Q. And then there's the term "Vikes" stands for
9 Vicodin, right?

15:33:24 10 A. Correct.

11 Q. Now, some of these drugs are Oxycodone-based and
12 some of these are Hydrocodone-based.

13 Right?

14 A. Yes.

15:33:35 15 Q. And these drugs, both of these drugs or categories
16 of drugs are dispensed at Walgreen pharmacies.

17 Correct?

18 A. Sure.

19 Q. So the PowerPoint goes on to say -- describe
15:33:57 20 sources.

21 "Given for free by a friend or relative."

22 Do you agree with that?

23 A. Sure. Could be.

24 Q. "Purchased from a friend or relative."

15:34:07 25 True?

1 A. Could be, sure.

2 Q. "Stolen from a friend or relative."

3 True?

4 A. I've seen that, sure.

15:34:13 5 Q. "Their own prescription," right?

6 A. True.

7 Q. Or "from drug dealers," right?

8 A. Yes.

9 Q. This next page talks about or is entitled "Myth
15:34:31 10 busters."

11 The myth being or described that
12 "Prescription drugs are safer than illegal drugs," and
13 there's a big "False" sign under that.

14 You agree that it is not true that
15:34:49 15 prescription drugs are safer than illegal drugs, correct?

16 A. Ask me that again.

17 Q. Sure.

18 It's a myth, is it not, that prescription
19 drugs are safer than illegal drugs?

15:35:03 20 A. Yes.

21 Q. By the way, after you asked for this PowerPoint
22 presentation, did you use it yourself in --

23 A. I think I used it at a pharmacy manager meeting.

24 Q. Okay. And what was the purpose of that meeting?

15:35:29 25 A. Just to raise awareness.

1 Q. To raise awareness about what?

2 A. Opioids, you know, just to be careful and do your
3 due diligence when you're filling a prescription.

4 Q. Okay. So this next chart, this next page of this
15:35:48 5 PowerPoint from Walgreens, from the Walgreens PowerPoint,
6 is entitled "Unintentional drug overdose deaths by major
7 type of drug in the United States, 1999 to 2008."

8 Do you see that?

9 A. I do.

15:36:03 10 Q. And in the category of "opioid analgesics," that is
11 in red and follows this line, correct?

12 A. Yep.

13 Q. And then "cocaine," which is in a lighter red,
14 follows this line, correct?

15:36:27 15 A. Yes.

16 Q. And then "heroin" follows this line, and this
17 covers the period from 1999 to 2008, right?

18 A. Yes.

19 Q. And the intent of this slide from this Walgreens
15:36:39 20 PowerPoint is to demonstrate that with respect to
21 unintentional overdose deaths, first of all, they were on
22 the rise between 1999 and 2008, right?

23 A. Yes.

24 Q. And, in fact, it shows in the left-hand side the
15:36:57 25 number of deaths and how the number of deaths rose from

1 either 2,000 or 4,000 in 1999 to as high as 12,000 in
2 2008, right?

3 A. Yes.

15:37:20

4 Q. And the important part of this slide is that it
5 demonstrates that opioid analgesics significantly
6 contribute to unintentional drug overdose deaths than do
7 illegal drugs cocaine and heroin, correct?

8 A. Yes.

15:37:38

9 Q. Now, is that something that you knew as a
10 pharmacist before you saw this slide?

11 A. I think you can kind of infer that from reading the
12 newspaper.

15:37:50

13 I mean, reading about drug overdoses going
14 up in counties, I mean we have that in our newspaper all
15 the time, so certainly I knew that opioids were a huge
16 problem or huge issue.

15:38:10

17 Q. Right. But the -- but the important part of this
18 slide is that it -- that it was the opioid pills that
19 were causing the highest increase in unintentional
20 overdose deaths, right?

21 A. Yeah. I'm kind of surprised Fentanyl isn't on
22 here, but, yeah, opioid analgesics were a big part of the
23 problem.

15:38:31

24 Q. Right. And would you agree that if Walgreens knew
25 that that was happening between 1999 and 2008, that they

1 should be doing everything to create policies and train
2 their pharmacists to make sure that opioid prescriptions
3 are properly dispensed to people for legitimate medical
4 purposes?

15:38:54 5 A. Yeah, but every pharmacist has been doing this from
6 the time they got out of pharmacy school.

7 I mean, that's what you do every day as a
8 pharmacist. You look at prescriptions, evaluate them,
9 maybe investigate them, make a judgment call whether to
10 fill or refuse.

11 We filled and we've refused plenty of
12 prescriptions.

13 Q. All right. Let's go on to the next slide,
14 Mr. Joyce.

15:39:21 15 This is a slide entitled "Deaths from
16 opioid pain relievers exceed those from all illegal
17 drugs."

18 Do you see that?

19 A. I do.

15:39:35 20 Q. And the source of this is the Center for Disease
21 Control Morbidity and Mortality Weekly Report from 2011,
22 right?

23 A. That's what it says, yep.

24 Q. And what this -- what this graph shows is the
15:39:54 25 significant impact of opioid pain relievers on deaths in

1 our country, does it not?

2 A. Yes.

3 Q. And how much more significant the impact is of
4 opioid pain relievers to deaths per hundred thousand than
15:40:13 5 illegal drugs, right?

6 A. Sure.

7 Q. Go on to Page 13 of the PowerPoint.

8 This is a -- this Walgreens publication
9 describes what opioids does to your body.

15:40:42 10 Right?

11 A. Yes.

12 Q. It alters judgment and decision-making.

13 Right?

14 A. Correct.

15:40:48 15 Q. It can lead to dangerous behavior.

16 Right?

17 A. True.

18 Q. It can even slow -- it can slow or even stop
19 breathing and lead to death.

15:40:57 20 Right?

21 A. That's how you would die from an opioid overdose,
22 yes.

23 Q. It can lead to uncontrollable movements.

24 True?

15:41:07 25 A. True.

1 Q. It can lead to mood and behavior changes.

2 Right?

3 A. True.

4 Q. Go to the next page.

15:41:15 5 So the dangers of opioids are described on
6 this page.

7 First, first is addiction.

8 You agree with that, right?

9 A. Absolutely.

15:41:26 10 Q. Physical dependence and withdrawal symptoms, you
11 agree with that, right?

12 A. Sure.

13 Q. Increases the likelihood to use other drugs, right?

14 A. Sure.

15:41:38 15 Q. Are you familiar with the concept of the gateway
16 effect?

17 A. Sure.

18 Q. That's a description of the gateway effect, isn't
19 it?

15:41:47 20 A. Yes.

21 Q. And prescription pill opioids increases the
22 likelihood that the user of those opioids might end up
23 using illegal or illicit drugs, right?

24 A. Yeah. I --

15:42:08 25 MR. STOFFELMAYR: Objection, Your Honor.

1 It calls for an opinion.

2 THE COURT: Overruled.

3 THE WITNESS: Can you ask me again?

4 BY MR. WEINBERGER:

15:42:18 5 Q. Sure. We're talking about the gateway effect that
6 the jury has heard in this case, and this bullet point is
7 intended to communicate that opioid prescription pills,
8 using them, increases the likelihood of the use of other
9 drugs, including illicit drugs.

15:42:39 10 Right?

11 A. Sure, but, you know, I don't think any of them are
12 any more dangerous than opioids. Opioids are bad for
13 sure.

14 Q. Um-hmm. The other dangers include side effects,
15:42:51 15 right?

16 A. Um-hmm.

17 Q. And overdose, right?

18 A. Sure.

19 Q. As of the time of this slide, overdose on opioids
15:43:01 20 was the number two leading cause of death, with car
21 accidents being number one.

22 Right?

23 A. Yes.

24 Q. As we go -- as we went past 2009 and into 2011 and
15:43:14 25 '12 and '13, did you come to learn that opioid-related

1 deaths actually exceeded deaths from car accidents in our
2 country?

3 A. Yes. I think in Trumbull County they're still
4 going up.

15:43:34 5 Q. When you say "In Trumbull County they're still
6 going up," you're saying the overdose deaths are still
7 going up --

8 A. I think so.

9 Q. -- in Trumbull County?

15:43:42 10 So the epidemic still exists in Trumbull
11 County, right?

12 A. I think the epidemic exists everywhere.

13 Q. Yes, it exists and it's ongoing, isn't it?

14 A. It is.

15:43:50 15 Q. And do you have familiarity with Lake County and
16 the effect of the epidemic in Lake County?

17 A. I don't.

18 Q. Do you have any reason to believe that there's any
19 difference between Lake County and Trumbull County when
15:44:03 20 it comes to the fact that the epidemic is ongoing?

21 A. I don't have any reason to believe it's different.

22 Q. Okay. Now, this next graph from the Center for
23 Disease Control and Prevention is another depiction of
24 the rise in unintentional drug overdose deaths between
15:44:39 25 1970 and 2007.

1 Right?

2 A. Looks that way, yep.

3 Q. Right. Now, you were talking earlier that certain
4 other -- well, certain drugs early on in your career that
15:44:55 5 were opioids were a problem, right?

6 A. Sure.

7 Q. They've always been a problem and always been
8 dangerous, right?

9 A. Yes.

15:45:00 10 Q. And you've been practicing as a pharmacist since
11 19 --

12 A. Over 40 years.

13 Q. Right. Since 1980.

14 A. '1.

15:45:12 15 Q. Since '81.

16 So if you look just from 1981 until 2007,
17 can we agree that the unintentional drug overdose deaths
18 has increased substantially, particularly since 1996
19 until 2007?

15:45:35 20 A. I would say it started going up in 1988 or so.

21 Q. Okay. We're done with that exhibit.

22 The next, the next subject that I want
23 to -- the next subject that I want to talk to you about,
24 Mr. Joyce, is the Ohio Board of Pharmacy.

15:46:11 25 The Ohio Board of Pharmacy is charged with

1 enforcing state law regarding the operation of
2 pharmacies.

3 True?

4 A. True.

15:46:20 5 Q. And it's a state agency, right?

6 A. Yes.

7 Q. With an executive director and employees, such as
8 pharmacy inspectors and field agents, right?

9 A. Correct.

15:46:31 10 Q. And it -- its long-time Executive Director was a
11 Mr. Winsley, right?

12 A. Mr. Winsley, yes.

13 Q. Um-hmm. And it has a public Board that oversees
14 the Board of Pharmacy, right?

15:46:51 15 A. Yes.

16 Q. And under state law in Ohio, eight positions on the
17 Board are filled by pharmacists.

18 Right?

19 A. Correct. And one public member.

15:47:03 20 Q. Right. And it's been a custom that the Governor
21 appoints pharmacists who are employed by some of the
22 retail drug chains, right?

23 A. I think the Governor likes to spread it around to
24 hospital, institution, retail chains, and independent
15:47:23 25 pharmacies.

1 Q. All right. And it is often the case that
2 pharmacists from Walgreens and CVS and Walmart and Giant
3 Eagle are appointed to be members of the Board.

4 Right?

15:47:43 5 A. I didn't know anyone from Walmart. I did know
6 folks from a hospital system in Columbus, and I think
7 some are on there now might be from the Cleveland Clinic,
8 but everyone was represented on the Board of Pharmacy.

9 Q. Okay. So let's stick to retail pharmacy chains.

15:48:03 10 It's been your experience or knowledge that
11 somebody from Walgreens has been on the Board, right?

12 A. Not always, but usually.

13 Q. Somebody from CVS has been on the Board?

14 A. I've known folks from CVS on the Board, sure.

15:48:20 15 Q. Sure. Some pharmacists from Giant Eagle has been
16 on the Board, right?

17 A. Yep.

18 Q. And the reason that you know that is because you
19 applied for a Board position and you were appointed by
15:48:34 20 the Governor in 2009 to a four-year term.

21 Right?

22 A. Sure.

23 Q. And did I read the records correctly that somebody
24 from the Ohio Retail Merchants Association is the one
15:48:48 25 that encouraged you to apply for a Board membership?

1 A. I don't think they encouraged me.

2 I think they helped facilitate the process
3 with the Governor's office.

4 Q. Okay. And the Ohio Retail Merchants Association is
15:49:06 5 a trade organization that, in part, represents the retail
6 pharmacy chains that do business in Ohio, right?

7 A. They represent retail merchants in Ohio, including
8 the pharmacy chains, yeah.

9 Q. Yeah, the chains like CVS, Walgreens, Walmart and
15:49:22 10 Giant Eagle, right?

11 A. And others, Target, you know, so forth.

12 Q. And so somebody from the Ohio Retail Merchants
13 Association helped facilitate your appointment to the
14 Board, right?

15:49:35 15 A. Yes.

16 Q. And you were appointed by the Governor -- I think
17 it was Governor Strickland at the time, right?

18 A. It was.

19 Q. -- in 2009, for a four-year term, right?

15:49:51 20 A. Yes.

21 Q. From August of 2009 until August of 2013, right?

22 A. Sure.

23 Q. And you were President of the Board for a year
24 during your last -- part of the last year of your term as
15:50:07 25 a Board member, right?

1 A. Correct.

2 Q. And while you served on the Board, you were working
3 for Walgreens as a pharmacy supervisor, correct?

4 A. Sure.

15:50:32 5 Q. And so when you served on the Board, you were
6 actually wearing two hats: You were wearing the hat of a
7 Walgreens pharmacy supervisor, and as a Board member,
8 right?

9 A. Well, when you serve the Board, you're representing
15:50:49 10 the people of the State of Ohio.

11 Q. Right. And when you serve on a public Board like
12 that, in the State of Ohio, perhaps elsewhere, you're
13 required to sign a conflict of interest statement?

14 A. True.

15:51:06 15 Q. Acknowledging that you had a responsibility first
16 to the public as a result of your Board position, right?

17 A. Sure.

18 Q. And from time to time the Ohio Board of Pharmacy
19 would bring disciplinary proceedings against pharmacists,
15:51:21 20 right?

21 A. Sure.

22 Q. And those disciplinary proceedings ultimately,
23 after being investigated, would be heard by the Board,
24 right?

15:51:31 25 A. Sure.

1 Q. And from time to time, as a Board member, you would
2 sit in judgment of other pharmacists who disciplinary
3 actions had been brought against, right?

4 A. Without question.

15:51:45 5 Q. And on occasion, you sat on panels involving
6 disciplinary actions against Walmart -- Walgreen
7 pharmacists, if you didn't personally know them, right?

8 A. Sure.

9 Q. You didn't recuse yourself or step aside on those
15:52:04 10 occasions, did you?

11 A. No, I didn't.

12 Q. Some of those cases involved Walgreen pharmacists
13 who were charged with diversion, right?

14 A. Sure. And if you ask folks on the Board, I was
15:52:33 15 probably tougher on the Walgreens pharmacists than I was
16 on the other pharmacists.

17 Q. Is there any record of that anywhere?

18 A. Not unless you go talk to the other members of the
19 Board.

15:52:42 20 Q. Well, when I say record, I mean documentation.

21 Is there any documentation of that?

22 A. You can look at the outcomes of the hearings for
23 the Walgreens pharmacist, any pharmacist that appeared
24 before the Board.

15:52:54 25 That's all public record.

1 Q. Well, sometimes while you're on the Board or
2 President of the Board, issues of interest to Walgreens
3 pharmacy business would come before the Board for
4 consideration and approval, right?

15:53:11 5 A. Sure.

6 Q. And if a Walgreens' employee was going to make a
7 presentation on behalf of Walgreens to the Board, are
8 there occasions when you would plan in advance with that
9 employee as to how you would handle the presentation so
10 it wouldn't appear as if you were improperly trying to
11 influence the Board?

12 A. I didn't present to the Board.

13 He would present to the Board.

14 Q. Right.

15:53:39 15 A. Would I facilitate getting him on the agenda?
16 Sure.

17 Q. Yeah. That didn't answer my question, sir, so
18 listen carefully to my question. Okay?

19 A. Sure will.

15:53:49 20 Q. If a Walgreens' employee was going to make a
21 presentation on behalf of Walgreens to the Board, there
22 were occasions when you and that employee would plan in
23 advance to make it look like you weren't trying to
24 improperly influence the Board with respect to the
15:54:08 25 decision.

1 True?

2 A. I didn't influence the Board on any Walgreens
3 decisions.

4 Did I help facilitate getting him on the
15:54:18 5 docket and make sure he was going to come in for the
6 August meeting? Yeah.

7 These were matters that would assist
8 pharmacies, Walgreens pharmacies, on new methods of
9 dispensing that would certainly help the people of the
15:54:34 10 State of Ohio.

11 Q. Well, do you know Walgreens employee by the name of
12 Bill Cover?

13 A. I do.

14 Q. He was in a position of corporate manager on
15:54:44 15 pharmacy affairs at Walgreens?

16 A. Sure.

17 Q. Was it his job to interact with governmental
18 agencies?

19 A. He did. He came and presented in front of the Ohio
15:54:54 20 Board.

21 Q. And did he help you -- did he approach you to help
22 gain support from the Ohio Board of Pharmacy for a
23 project known as The Well Experience for Walgreens
24 stores?

15:55:05 25 A. I think he approached me to help get him on the

1 schedule.

2 Well Experience stores were a little
3 different than that. A pharmacist was kind of out in the
4 waiting room out of the physical fill area, and we wanted
15:55:21 5 to see if the Board would approve that model being tried
6 in a store in Ohio.

7 And there were some different things that
8 had to be approved by the Board. For instance, that
9 pharmacist would be verifying prescriptions via computer
15:55:38 10 rather than physically holding the pills and looking at
11 them, and making sure they are white, round, with the
12 right numbers on them, and so forth.

13 So it was something that needed approval by
14 the Board, and the clinic would come in front of us for a
15:55:54 15 way for us to try something new, and then it would be
16 evaluated to see if it worked or not, if it decreased
17 error rates, and so forth.

18 Ultimately, the Well Experience Store in
19 Ohio I don't think was ever -- was ever rolled out, and
15:56:11 20 the company shelved that store design at some point.

21 Q. So to summarize that answer, would you agree that
22 the concept of the Well Experience for Walgreens would
23 change the interior of the Walgreens store to move
24 pharmacists out from behind the counter to a work station
15:56:35 25 in the store where they could answer questions from the

1 public and provide health counseling?

2 A. Sure. You could have -- you'd have easier access
3 to the public and you could have better, hopefully if you
4 had the right person there, have better conversations,
15:56:49 5 maybe find out why someone -- someone's diabetic medicine
6 that should last 30 days is coming in for a refill every
7 45 days, or someone mentioned, "Hey, my daughter had a
8 baby, and I'm going to be babysitting," so maybe they
9 might want to get a certain type of pertussis
15:57:10 10 immunization, and so forth.

11 Q. That Well Experience project was piloted in
12 Indiana, right?

13 A. I don't know that.

14 Q. Well, in 2011, was your colleague Mr. Cover
15:57:34 15 President of the Indiana State Board of Pharmacy?

16 A. Is that a question or a statement?

17 Q. That's a question.

18 A. Was he? I think he was, yeah.

19 Q. Well, he was a Walgreens employee, right?

15:57:52 20 A. I believe so.

21 Q. And are you aware that he presented while Board
22 President of the Indiana State Board of Pharmacy, this
23 Well Experience project?

24 Are you aware of that?

15:58:07 25 A. Presented to who; Ohio or Indiana?

1 Q. To the Indiana State --

2 A. No.

3 Q. -- Board of Pharmacy?

4 A. No.

15:58:13 5 Q. So you're not aware of the fact that in 2011, that
6 presentation created a fire storm regarding ethical
7 issues associated with Mr. Cover?

8 A. No.

9 Q. Mr. Cover never told you that?

15:58:27 10 A. I don't believe so.

11 That was 10 years ago.

12 Q. Well, it was 2012 --

13 A. Nine years ago.

14 Q. Well, now, wait a minute. Let me finish my
15:58:39 15 question.

16 A. Sure.

17 Q. It was 2012 when Mr. Cover approached you to help
18 him make a presentation about the Well Experience before
19 the Ohio Board of Pharmacy, right?

15:58:52 20 A. I'm not arguing that.

21 Probably, yeah.

22 Q. While you were President, right?

23 A. If it was after September 1st, I was probably
24 President then, yeah.

15:59:02 25 Q. Well, take a look at P 24017.

1 A. Is that in the same packet?

2 Q. Nope. We're going to give it to you.

3 A. Okay.

4 Q. So I'll let you read the e-mail for a minute before
15:59:44 5 I put it up.

6 (Pause.)

7 A. Sure.

8 Q. So this is -- this is an e-mail sent from Mr. Cover
9 to you, Brian Joyce, on July 11th, 2012.

16:00:18 10 Right?

11 A. Yeah. So I was Vice President of the Board then.

12 Q. Well, Mr. Cover writes in the e-mail, he says,
13 "Brian, nice work. Please remember my role is to present
14 and defend our position in compliance -- of compliance in
16:00:46 15 the public meetings so that you can eliminate any
16 perception of bias by the Board with you being
17 President."

18 Have I read that correctly?

19 A. Yeah. So I'm guessing he was going to come present
16:00:56 20 maybe in the September meeting or October meeting.

21 Q. And he goes on to write, "I really appreciate your
22 helping with this process in private conversations but
23 you should minimize comment at the public meeting."

24 Did I read that correctly?

16:01:15 25 A. Sure.

1 Q. "I think we can overcome the concerns you mention
2 below."

3 Have I read that correctly?

4 A. Sure.

16:01:28 5 Q. And he goes on to say, "Thanks again. Bill."
6 Right?

7 A. Yeah.

8 Q. By the way, was it your experience, back to
9 disciplinary cases of pharmacists brought before the
16:01:47 10 Board, that Giant Eagle, employees of Giant Eagle were on
11 the Board for some of those?

12 A. Sure. Giant Eagle was. CVS was. Independent
13 pharmacy was. A hospital pharmacist. The private
14 member.

16:02:02 15 Q. Right.

16 A. And someone who worked at the Cincinnati Free
17 Clinic.

18 Q. Was it your experience that a Giant Eagle Board
19 member would sit in on disciplinary proceedings that were
16:02:13 20 brought against Giant Eagle pharmacists?

21 A. If the --

22 MS. SULLIVAN: Your Honor, objection, Your
23 Honor.

24 Lacks foundation, and if we can go to
16:02:20 25 side-bar.

1 THE COURT: All right.

2 (Proceedings at side-bar:)

3 MS. SULLIVAN: Your Honor, can you hear me?

4 THE COURT: Yes.

16:02:35 5 MS. SULLIVAN: Your Honor, I specifically
6 asked Mr. Weinberger before the witness got on the stand
7 whether he was going to bring up an unrelated different
8 county no-admission settlement by Giant Eagle, and he
9 said he was not, and now he's asking about Giant Eagle's
16:02:49 10 involvement in disciplinary proceedings.

11 It's our position, Your Honor, that if they
12 want to use that settlement agreement, Your Honor should
13 rule on it. It falls squarely within your ruling that it
14 is unrelated to the litigation. It relates to employee
16:03:03 15 theft in a different county.

16 THE COURT: Well, I haven't seen it at all
17 at this point.

18 MS. SULLIVAN: But, Your Honor --

19 THE COURT: So I won't let the witness get
16:03:10 20 into it until I've seen it and had argument on it.

21 MS. SULLIVAN: And, Your Honor, I move to
22 strike the question as improper.

23 MR. WEINBERGER: It's -- it's not my intent
24 to ask about Ohio Board of Pharmacy actions brought
16:03:24 25 against Giant Eagle pharmacies.

1 I'm asking only about disciplinary
2 proceedings against a GE pharmacist.

3 MS. SULLIVAN: There weren't any -- that's
4 the point, Your Honor -- except for this unrelated
16:03:38 5 settlement agreement.

6 MR. WEINBERGER: Your Honor, I'll move on
7 to another question.

8 THE COURT: Let's move on, please.

9 MS. SULLIVAN: Your Honor, I move to strike
16:03:43 10 the question.

11 (End of side-bar conference.)

12 THE COURT: All right. The witness and
13 jury are to disregard that last question.

14 BY MR. WEINBERGER:

16:04:07 15 Q. Was it customary, Mr. Joyce, that Walgreens
16 annually would do evaluations of your work as a
17 pharmacist and as a district or pharmacy supervisor?

18 A. Everyone at Walgreens had an evaluation once a
19 year.

16:04:27 20 Q. And was that evaluation in part used to set your
21 compensation and bonus?

22 A. Yeah.

23 Q. And isn't it a fact that on multiple
24 occasions -- oh, by the way, when these personal

16:04:41 25 evaluations would occur, you would actually sit down and

1 meet with Walgreen -- your supervisors at Walgreens or
2 members of the HR department, and you would go over these
3 evaluations, right?

16:04:58 4 A. Sure. So I would have -- when I was a pharmacy
5 supervisor I would sit down with my district manager once
6 a year, and we'd go over the eval.

7 Q. Right. And so you would have -- you would have
8 this conversation, and you would talk about things that
9 you accomplished during the prior year as part of the
16:05:14 10 evaluation process, right?

11 A. Yeah. So I would do a self-evaluation and rank
12 myself, and then they would write down their thoughts and
13 rank me on that same measure.

14 Q. Right. And while you were the board member and
16:05:29 15 ultimately the President of the Ohio Board of Pharmacy,
16 that's one of the things that you touted as part of your
17 accomplishments, right?

18 A. Hey, I was proud to be on the State Board of
19 Pharmacy as a pharmacist. I was happy to work for my
16:05:41 20 profession and give my input to the Board and hopefully
21 improve pharmacy for the citizens of Ohio.

22 I was very proud of that and still am
23 today.

24 Q. So as a Board member, you were charged with
16:05:57 25 ensuring that the Ohio Board of Pharmacy enforced the

1 rules regulating pharmacists, right?

2 A. Yeah.

3 Q. And pharmacies, right?

4 A. Correct.

16:06:07 5 Q. Particularly the rules involving the handling and
6 dispensing of controlled substances, right?

7 A. It ran the gamut, everything.

8 Q. And the Ohio Board of Pharmacy's stated goal is to
9 protect the health and safety of the public.

16:06:23 10 True?

11 A. True.

12 So most of my time in Columbus, it was
13 three days a month, the first Monday, Tuesday and
14 Wednesday of every month, primarily was disciplinary
16:06:36 15 proceedings against pharmacists.

16 Q. The Ohio Board of Pharmacy had a duty to ensure
17 that the retail chain pharmacies follow the law, true?

18 A. That everyone follow the law, sure.

19 Q. They had -- the Ohio Board of Pharmacy had a duty
16:06:51 20 to promulgate regulations that protect patient safety,
21 right?

22 A. Sure.

23 Q. And particularly with respect to prescription
24 opioid drugs, right?

16:07:01 25 A. I mean, I don't know if particularly.

1 Every drug.

2 Q. The Ohio Board of Pharmacy had a duty to enforce
3 the laws to prevent diversion, right?

4 A. Without question.

16:07:15 5 Q. And you had a duty as a Board member to ensure that
6 the Ohio Board of Pharmacy regulations were enforced by
7 the Board.

8 Right?

9 A. Ask me that again.

16:07:26 10 Q. Sure.

11 You had a duty as a Board member to ensure
12 that the Ohio Board of Pharmacy employees enforced the
13 drug laws to prevent diversion, right?

14 A. Sure.

16:07:39 15 Q. And particularly to prevent the unlawful diversion
16 of opioid pills, right?

17 A. Sure.

18 Q. And it is the case, sir, that while you were on the
19 Board, the Ohio Board of Pharmacy personnel working for
16:07:57 20 the Board were accumulating and studying statistical

21 information and data on how dangerous the opioid
22 dispensing crisis was to our communities in Ohio, right?

23 A. Did I know they were doing that? No. I'm not
24 surprised they were doing it, but I don't know if I knew
16:08:22 25 that while I was on the Board.

1 Q. Okay. Part of those -- well, you had Board
2 discussions?

3 A. Sure, we had Board discussions. We had --

4 Q. Right?

16:08:31 5 A. -- the Attorney General come and present in front
6 of the Board, Mike DeWine.

7 Sure, we did all that.

8 Q. And even after you were -- you left the Board you
9 kept up with the Ohio Board of Pharmacy work, right?

16:08:50 10 A. I tried to.

11 Q. Including the work that was done on
12 opioid-dispensing issues and the epidemic, right?

13 A. I tried to keep up on as much of the State Board
14 that I could.

16:09:01 15 They send out newsletters quarterly, and I
16 would talk to folks occasionally that I knew that were
17 still on the Board, but some had rotated off, so --

18 Q. Right. Now, in fact, in your evaluations and after
19 you left your Board position, your evaluations with

16:09:17 20 Walgreens in 2014 and '15 and 16 talked about the fact
21 that you kept current on issues before the Ohio Board of
22 Pharmacy, right?

23 A. I sure tried to.

24 Q. So let's take a look at P 20809.

16:10:00 25 Do you have that document in front of you?

1 A. 20809.

2 Q. Right.

3 Go to the second page, if you would.

4 A. Sure.

16:10:08 5 Q. This document is a presentation on OARRS.

6 You know what OARRS is, right?

7 A. Sure do.

8 Q. It's the -- it's what the jury has heard is the
9 PDMP for the State of Ohio, right?

16:10:28 10 A. Sure.

11 Q. And this is -- we talked about this publication at
12 your deposition, right?

13 A. I believe so.

14 Q. Right. And you see that it's a guide for law
16:10:44 15 enforcement presented by the Ohio State Board of Pharmacy
16 and the office -- Ohio Office of Criminal Justice
17 Services, right?

18 A. Yes.

19 Q. And it's a presentation done by Trey Edwards,
16:11:00 20 right?

21 A. Correct.

22 Q. Dated August 26th, 2004 -- '14, right?

23 A. Yes.

24 Q. And you know Mr. Edwards, right?

16:11:11 25 A. I know Trey, sure.

1 Q. Trey was a compliance agent who spent time
2 at -- inspecting some of the pharmacies that you oversaw,
3 right?

4 A. I don't think he had ours.

16:11:25 5 I had George Pavlich for most of the time.

6 Q. Okay. So what about in Lake County --

7 A. No, I don't know who did Lake County.

8 Q. But anyway, you know -- you know Trey Edwards,
9 right?

16:11:39 10 A. I know Trey Edwards, sure.

11 Q. Okay. So going to the next page, this page
12 describes Mr. Edwards' experience, right?

13 MR. STOFFELMAYR: Your Honor, there's a
14 lack of foundation.

16:11:52 15 There's no testimony he's ever seen this
16 before other than being shown it at a deposition.

17 THE COURT: Okay. I'm not sure where
18 you're going with this, Mr. Weinberger.

19 Maybe we should go on the headphones.

16:12:28 20 THE WITNESS: Could I stand up and stretch
21 for a second?

22 THE COURT: Sure.

23 (Proceedings at side-bar:)

24 MR. WEINBERGER: So, Your Honor, this is an
16:12:36 25 official publication of the Board of Pharmacy, which he

1 formerly was associated with.

2 In this publication, there are a number of
3 charts and discussions about the opioid crisis.

4 There are -- there's a discussion in the
16:12:58 5 context of the PDMP, OARRS, that operates within the
6 State of Ohio.

7 He testified extensively about this
8 publication in his deposition without objection, and we
9 discussed his familiarity with many of the statements
16:13:22 10 that were made in this publication.

11 And, you know, it is an official
12 publication of the Ohio Board of Pharmacy.

13 MR. STOFFELMAYR: After he left the Board.

14 THE COURT: Well, it's just a year or two
16:13:36 15 after he left the Board.

16 If he can authenticate it and if he says he
17 remembers getting it, and you can ask him if he agrees or
18 disagrees with the characterization of this, he's
19 knowledgeable, he's a pharmacist, so --

16:13:53 20 MR. STOFFELMAYR: I think that's fine, Your
21 Honor.

22 I just want to clarify the foundation
23 that's missing is what you just said, that he got it but
24 he saw it before. The fact that he was asked questions
16:14:03 25 about it at his deposition before was neither here nor

1 there.

2 MR. WEINBERGER: Your Honor, I don't think
3 this witness has to -- this is a self-authenticating
4 document.

16:14:14 5 MR. STOFFELMAYR: Our objection is --

6 MR. WEINBERGER: Can I finish, please?

7 This is a Government document.

8 He -- he doesn't have to authenticate this.

9 THE COURT: No, he's not -- Peter, Mr.

16:14:26 10 Weinberger, it's not so much authenticating it.

11 If you're going to essentially read in or
12 get in the contents of this, he has to say, all right,
13 "I'm familiar with it, this is something I used" or "I
14 agree with this," with this characterization.

16:14:46 15 I don't know exactly what you're going to
16 ask him, if you're going to ask him about OARRS and what
17 OARRS is, and is this a correct characterization of OARRS
18 and how a pharmacist sees it.

19 I mean, he's certainly knowledgeable about
16:15:00 20 that.

21 MR. WEINBERGER: So --

22 THE COURT: I don't know where --

23 MR. WEINBERGER: Let me tell you where I'm
24 going --

16:15:04 25 THE COURT: All right.

1 MR. WEINBERGER: -- so there's no
2 surprises.

3 If you go -- if you go to Page 14 of this
4 document, of the Bates stamp, tell me when you're there.

16:15:21 5 THE COURT: I've got it.

6 MR. WEINBERGER: Okay. There's information
7 about the background of the scope of the drug abuse
8 problem, including some charts, specifically relating to
9 Ohio and nationally.

16:15:39 10 There is also a map on Page 20, which takes
11 information from OARRS and calculates the per capita
12 doses for each county, all of which are in this official
13 document.

14 I asked him about it, and, you know, he
16:16:11 15 didn't deny that any of this was, in fact, true.

16 In fact, we went through each one, each one
17 of those pages.

18 MR. STOFFELMAYR: Well, Judge, how could he
19 possibly know any of this is true? The point is he
16:16:24 20 didn't endorse this document, he didn't author it, he's
21 never seen it. To ask him if he has any reason to
22 disagree, which is going to happen with this data someone
23 generated, of course he's going to say "I see it on the
24 page, I don't think they would lie," what is that going
16:16:39 25 to establish? It's just making him a sounding Board for

1 evidence that should come in through a witness who
2 actually knows the subject matter, like Mr. Edwards, who
3 will testify in this case.

4 THE COURT: Mr. Weinberger, let's -- I
16:16:54 5 mean, I mean I'm going to apply the same rules to him as
6 the others.

7 I'm only going to let witnesses testify
8 about documents they have some knowledge about, if they
9 used it, they relied upon it, that they had
16:17:14 10 something -- some connection with, either in their work
11 or whatever.

12 If that's what he's going to say, fine.
13 You know, you don't need him to authenticate the document
14 to put in all these contents.

16:17:28 15 He'll either have to say I -- particularly
16 if there's going to be a witness who actually prepared
17 it, Mr. Edwards is testifying, he's the one you should go
18 through page by page.

19 MR. WEINBERGER: Well, I'm not going to go
16:17:44 20 through every page of this document, but there are
21 certainly pages that are relevant to his knowledge of the
22 opioid crisis.

23 THE COURT: But there are a few pages, and
24 if you're going to say "Look at this, do you believe this
16:17:55 25 is accurate, and is this the state of things in Ohio, you

1 know, the year after you were on the Board and while you
2 were still at Walgreens," I'll let him do that.

3 But it's got to be limited.

4 MR. STOFFELMAYR: Judge, he's already used
16:18:09 5 a document that the witness was familiar with to
6 establish his knowledge of the same information two years
7 earlier or three years earlier.

8 The fact that there is a document that he's
9 never seen before that has the same information doesn't
16:18:22 10 establish his knowledge of anything.

11 THE COURT: I will allow a very limited use
12 of this, but I'll see where this is going, and I may cut
13 it off.

14 MR. STOFFELMAYR: Thank you, Judge.

16:18:34 15 (End of side-bar conference.)

16 BY MR. WEINBERGER:

17 Q. Mr. Joyce, we've already established you're
18 familiar with OARRS, right?

19 A. Sure.

16:18:55 20 Q. And this document that's in front of you is a
21 presentation about OARRS, right?

22 A. That's what the front of it says.

23 Q. Right. And you're aware of the fact that after
24 OARRS came into existence in Ohio, there was evidence

16:19:16 25 to -- published by the Ohio Board of Pharmacy that it was

1 effective in reducing diversion, the use of OARRS was
2 effective in reducing diversion.

3 True?

4 A. Sure. And I would agree with that.

16:19:27 5 Q. Okay. And this, this document, describes -- let's
6 just take a look at beginning on Page 27.

7 A. Okay.

8 Q. This document says that, "On January 1st, 2006,
9 Ohio created a dangerous drug database and tasked the
16:20:01 10 Board of Pharmacy with collecting, analyzing, and
11 distributing the data. The database is known as the Ohio
12 Automated Prescription Reporting System or OARRS."

13 Did I read that correctly?

14 A. You did.

16:20:12 15 Q. And it goes on to say "Who has the obligation to
16 report to OARRS," and it says "All pharmacies,
17 prescribers who personally furnished medication, and
18 wholesalers must submit controlled substance dispensing
19 data to OARRS."

16:20:32 20 Did I read that correctly?

21 A. You did.

22 Q. And that "Pharmacies and prescribers must report at
23 least daily; wholesalers, monthly."

24 Right?

16:20:41 25 A. You read that correct.

1 MR. STOFFELMAYR: Judge, I'm going to
2 object to just reading out loud.

3 That doesn't establish anything.

4 BY MR. WEINBERGER:

16:20:48 5 Q. Well, you agree with those statements, do you not?

6 A. I agreed that you read them right and that's what
7 OARRS does.

8 THE COURT: That isn't the --

9 BY MR. WEINBERGER:

16:20:58 10 Q. No.

11 You agree with the substance of the
12 statements?

13 THE COURT: Hold it.

14 (Proceedings at side-bar:)

16:21:19 15 THE COURT: This isn't going anywhere.

16 If you want to ask him what OARRS is and
17 how it worked, and how he dealt with it when he was on
18 the Ohio Board of Pharmacy, I'll certainly allow that.

19 But there's no reason to be reading into
16:21:35 20 this document -- reading the document. You can just ask
21 him these questions himself and he'll give the answers.

22 And if he gets it wrong and you want to
23 cross-examine with this, you can cross-examine him.

24 But I'm not just going to let you read the
16:21:51 25 document in through him, unless it's something that you

1 can establish he used, he relied on it.

2 (End of side-bar conference.)

3 BY MR. WEINBERGER:

4 Q. Mr. Joyce, when you were working for Walgreens, did
16:22:22 5 you have any idea what the volume of pills were being
6 dispensed out of your stores regarding opioid
7 prescriptions?

8 A. I think we got reports sometimes that showed a
9 month or two of numbers, but I don't remember seeing it.
16:22:47 10 I don't think we had access to a report that showed,
11 like, a historical trend or history of that.

12 Q. So on occasion, you would receive a monthly report
13 regarding the volume of pills dispensed from your stores?

14 A. No.

16:23:10 15 I think it had to do with wholesalers just
16 verifying with the drug stores, you know, what kind of
17 neighborhood it was; or high prescribers, was there an
18 oncology clinic, was there a pain clinic, those sorts of
19 things.

16:23:31 20 Q. So you, you yourself or Walgreens corporate, to
21 your knowledge, never provided you with statistics
22 regarding the quantity or amount of dosage units
23 dispensed from your Trumbull County stores.

24 True?

16:23:50 25 A. I don't believe I ever saw those.

1 Q. Do you know whether or not Walgreens corporate had
2 the capabilities of analyzing the dispensing data of
3 opioid prescriptions being dispensed from your stores?

4 A. I -- I don't, but I would assume so.

16:24:13 5 Q. But you never saw such a report?

6 A. I don't remember seeing any such report.

7 Could I have? Sure. Do I remember 10
8 years ago a report I saw in an e-mail? No.

9 Q. But you knew that in general in Trumbull County,
16:24:33 10 OxyContin's prescriptions and Hydrocodone prescriptions
11 were fueling the opioid epidemic in these counties,
12 right?

13 A. Mr. Weinberger, without question, every pharmacy in
14 the State of Ohio was well-aware of the opioid problem in
16:24:49 15 every city, county, 'burb in the state.

16 Q. And you have no idea whether Walgreens was
17 accumulating the information from the dispensing data
18 from your stores and other stores in the State of Ohio
19 prescription by prescription.

16:25:07 20 True?

21 A. Well, they could only accumulate Walgreens'
22 numbers.

23 Q. So they were accumulating Walgreens'?

24 A. I have no idea.

16:25:15 25 Q. You never saw any reports?

1 A. I don't remember seeing any report.

2 Q. Did you know while you were working as a district
3 manager or pharmacy supervisor that Walgreens' corporate
4 data could be used to calculate and chart out trends
16:25:32 5 regarding the number of opioid pills dispensed annually
6 from every one of your Trumbull County stores?

7 A. Did I know that? No.

8 Q. We're going to show you Exhibit 26321.

9 A. Is that in this packet?

16:25:56 10 Q. No, we're going to bring it up to you.

11 A. Are we done with this?

12 Q. Yes, we are for now. Um-hmm.

13 MR. WEINBERGER: Your Honor, for the
14 record, this is a Rule 1006 document.

16:26:21 15 BY MR. WEINBERGER:

16 Q. Before we get to the document, Mr. Joyce, I want
17 you to assume that all of the dispensing data for pills,
18 opioid pills dispensed from your Trumbull County stores,
19 were produced by Walgreens to us for the years 2006 until
16:26:53 20 2019, and that we have created a number of charts based
21 upon an analysis of that data.

22 Okay?

23 A. Sure.

24 Q. Are you with me?

16:27:08 25 A. Sure.

1 Q. All right. I want you to take a look at the third
2 page of this document, this P 26321.

3 MR. STOFFELMAYR: Judge, I'm going to
4 object to lack of foundation, asking a fact witness about
16:27:28 5 a chart prepared by an expert.

6 THE COURT: Well, overruled so far.
7 He is just showing him the document. We'll
8 see where it goes.

9 MR. STOFFELMAYR: Thank you.

16:27:39 10 BY MR. WEINBERGER:

11 Q. So this document, let's just concentrate on
12 Trumbull County.

13 You were from 2006 until 2019, you were in
14 charge of or had some association with the Trumbull
16:28:01 15 County Walgreens stores, right?

16 A. Through 2021.

17 Q. Right. And take a look at this column that says
18 "Total dosage units," that's total number of pills from
19 2006 until 2019 dispensed out of those Trumbull County
16:28:27 20 stores.

21 Do you see that?

22 A. I do see that.

23 Q. Would it surprise you, sir -- strike that.

24 Let's just take a look at 2008.

16:28:35 25 Does the number 1,324,188 pills strike you

1 as correct?

2 A. I have no idea.

3 Q. Do you see how it increases in number through 2011
4 and stays relatively steady until 2015 for pills
16:29:08 5 dispensed out of your store, stores in Trumbull County?

6 A. Yeah.

7 So those stores in Trumbull County that
8 you've brought up when we first started, Niles, fairly
9 new store, Hubbard opened up after I became a supervisor,
16:29:24 10 Cortland opened up after I became supervisor. Warren was
11 an older store. Elm Road opened up sometime around the
12 time that I became a supervisor. So these were new
13 stores that were growing, front-end sales and pharmacy
14 sales, quickly.

16:29:48 15 So I'm not surprised that there are
16 increases like that because when stores are new, they
17 tend to have high growth rates, like 20 percent, 25
18 percent, and so forth. And that's -- that is expected.

19 Q. All right. Well, take a look at Page 4 of this
16:30:07 20 exhibit. We've broken this down by store, you see, on
21 the -- on this side of the exhibit.

22 A. Sure.

23 Q. These are the Trumbull County stores, and Store
24 5449, which one is that?

16:30:35 25 A. That's the store that I came out of.

1 Q. And is that a new store or an older store?

2 A. Established store. That's an older store.

3 The other ones are relatively new.

4 Q. Okay. So between 2006 and 2019, 8,225,000 pills
16:30:54 5 were dispensed out of that store, correct?

6 MR. STOFFELMAYR: Objection, Your Honor.

7 A. I didn't add them up.

8 THE COURT: Overruled.

9 BY MR. WEINBERGER:

16:31:00 10 Q. I'm sorry?

11 A. I didn't do the math. I don't know.

12 I trust your math.

13 Q. Okay. Well, this comes from Walgreens' dispensing
14 data.

16:31:08 15 A. Okay.

16 Q. Do you understand that?

17 MR. STOFFELMAYR: Your Honor, just my
18 foundational objection.

19 He's being asked if these numbers are
16:31:14 20 correct, and it's just a chart that their expert has
21 prepared and been put in front of him. How could he
22 possibly answer these questions?

23 MR. WEINBERGER: Your Honor, these --

24 THE COURT: Hold it. Hold it. Let's go on
16:31:25 25 the headphones.

1 (Proceedings at side-bar:)

2 MR. WEINBERGER: Your Honor, this 1006
3 pursuant to our CMO was presented to the defendant, there
4 was no objection to it, and as a result it is admissible
16:32:03 5 and can be used by --

6 THE COURT: All right. Mr. Weinberger, I
7 will let you -- you know, you can ask -- the witness has
8 already established he never saw it, never got any of
9 this data. Forget the chart. He never saw or received
16:32:17 10 any reports.

11 You can show him this and you can ask him
12 does he have any, you know, any explanation for these
13 increases or these numbers.

14 And if he does, he can give it. If he's
16:32:31 15 saying he doesn't, well, then, his testimony is "I
16 don't -- I don't know."

17 He said some stores are older, some are
18 newer. You can ask him if the older store seems to have
19 the biggest number that contradicts what he says.

16:32:45 20 So I'll allow some questioning about this
21 document, but not -- not ad nauseam.

22 MR. STOFFELMAYR: But, Judge --

23 THE COURT: He doesn't know anything about
24 it.

16:32:55 25 MR. STOFFELMAYR: To be fair, can he ask if

1 these numbers are correct? That was the last question
2 that made no sense at all.

3 If these numbers are correct or incorrect,
4 Mr. McCann has to testify to that, but you can't possibly
16:33:08 5 expect this witness to look at this for the first time in
6 his life and say, "Oh, yeah, 8,243,000, that's correct, I
7 know that."

8 THE COURT: Well, you
9 can -- Mr. Weinberger, you can ask, assuming this is
16:33:27 10 correct, "Do you have any explanation for these trends or
11 why the older store seems to have more pills than the
12 newer store?"

13 He's already said, "Well, I'd expect big
14 growth rate from the newer stores."

16:33:40 15 All right. You can ask that, because these
16 are the stores under his supervision, so see what
17 knowledge he's got and what explanation he gives.

18 (End of side-bar conference.)

19 BY MR. WEINBERGER:

16:34:11 20 Q. As, Mr. Joyce, as district manager for the five
21 years before you retired, and as pharmacy supervisor
22 before that, did you from time to time keep track of
23 dispensing volumes within the stores?

24 A. Sure.

16:34:28 25 Q. And did you break it down by controlled versus

1 noncontrolled?

2 A. No.

3 Q. Did you -- would it have been helpful to you if
4 the -- if Walgreens corporate would have provided that
16:34:42 5 information to you?

6 A. I don't think so. We did a good job filtering
7 prescriptions, doing good-faith dispensing, whether that
8 was on a form provided by Walgreens or just what
9 pharmacists do every day.

16:34:57 10 We did a good job in Trumbull County.

11 Refusing prescriptions that we thought were not ethical,
12 they were legal prescriptions, they were written by a
13 doctor who had an active state license and DEA license,
14 but they weren't ethical, so we didn't fill them, and we
16:35:15 15 gave those back to the patient.

16 And we filled those prescriptions that we
17 thought should be filled for people with legitimate
18 medical needs.

19 Q. So if 8,225,000 pills were dispensed out of your
16:35:30 20 Store 5549, you're saying that your pharmacists did an
21 excellent job of screening out those scripts, looking for
22 red flags, and resolving them.

23 Right?

24 A. That's a high-volume store.

16:35:47 25 Sure.

1 Q. Now, the Store 9077, which store is that?

2 A. That's Elm Road.

3 Q. Was that a new store or older store?

4 A. It was a newer store.

16:36:00 5 It maybe opened in, you know, 2005 maybe,
6 something like that.

7 Q. Well, track with me, if you would, that column.

8 It looks like it may have opened somewhere
9 around 2005 or '6, and that you can see the growth up to
16:36:16 10 as high as 539,000 pills dispensed in 2014.

11 Right?

12 A. 2013 they filled, looks like, 421,000.

13 Q. Right. 419,000 in 2014, right?

14 A. Sure.

16:36:33 15 Q. And 539,000 in 2015, right?

16 A. Sure.

17 Q. And what about Store Number 6888, where is that?

18 A. That's in Niles, Ohio.

19 Q. Is that a newer or old store?

16:36:48 20 A. Newer.

21 These stores, Walgreens stores, other than
22 Warren and three Mahoning County stores, were all new
23 stores.

24 Q. And with respect -- and if you would track with me,
16:36:59 25 with respect to each one of those stores, the trends in

1 opioid pill dispensing increases pretty much all along
2 the way.

3 Right?

4 A. Well, total volume increased all along the way.

16:37:14 5 They were new stores and growing quickly.

6 We were fighting for insurance plans. If
7 you look at 5549, in 2006 they only had 163,000
8 dispensed. I think we lost a General Motors Lordstown
9 contract that year, so we lost a lot of scripts there.

16:37:32 10 So there's a lot of factors in these
11 numbers not related to, you know, what -- what contracts
12 did we have, what doctors were nearby; were there pain
13 clinics, was there oncologists, those sorts of things.

14 Q. So just track with me for a moment here.

16:37:53 15 In Trumbull County on Page 3 of this
16 exhibit there are 210 -- do you see where it says
17 "Average population," there are 210,000?

18 I just circled it for you, if you want to
19 look on the screen.

16:38:12 20 A. Sure. I see it.

21 Q. Right. And so in this county of 210,000
22 population, according to this chart, there were
23 26,000,000 pills dispensed out of Walgreens' Trumbull
24 County stores between 2006 and 2019.

16:38:37 25 Does that sound excessive to you?

1 A. Well, if you look at --

2 Q. Sir --

3 A. -- dosage units per capita, it looks like 10 pills
4 a year per person, or 11 pills.

16:38:51 5 I mean, some people took pain pills month
6 after month, they had legitimate injuries from wrapping
7 their car around a telephone pole or laying their
8 motorcycle in the back end of a semi, or industrial
9 accidents at mills, and so forth.

16:39:09 10 So I don't know if that's a -- doesn't seem
11 to be a crazy number of pills.

12 Q. So using the per capita column that you just
13 referred to, that's -- that's 10 pills per person for
14 every man, woman and child in Trumbull County.

16:39:31 15 You understand that?

16 A. Sure, I understand it.

17 Q. And you don't feel that that's excessive?

18 A. Well, if one person is taking 180 pills a month,
19 there's lots of people that are taking zero pills per
16:39:46 20 month.

21 So --

22 Q. So let's do that computation.

23 If one person is taking 180 pills a month,
24 did you say?

16:39:59 25 A. Yeah. Say they're taking something every four

1 hours for pain.

2 Q. Okay.

3 A. Per month.

4 Q. Sure.

16:40:11 5 And over what -- do you want to -- over,
6 you think that happens over a number of months with
7 respect to one patient?

8 A. Sometimes they're on it for extended, a year.

9 Q. For a year, okay.

16:40:24 10 So even if we took one year's worth of
11 pills for one -- for one patient, and you multiply 12
12 times 180, okay --

13 A. Roughly 2,400, or something like that.

14 Q. That would be about 4,000 pills for one person,
16:40:53 15 right?

16 A. No.

17 MR. LANIER: No.

18 Q. Like 2,000?

19 THE COURT: Your math isn't right,
16:41:00 20 Mr. Weinberger.

21 BY MR. WEINBERGER:

22 Q. All right. Well, 10 times 180 -- you're right,
23 Your Honor -- 10 times 180 is 1,800?

24 THE COURT: Whenever I do something in my
16:41:11 25 head at my age I get it wrong, and you're about the same

1 age as I am, so you have to do it the old-fashioned way,
2 because that's how I now have to do it.

3 MR. WEINBERGER: All right.

4 BY MR. WEINBERGER:

16:41:22 5 Q. It would be 2,160, right?

6 A. Yeah.

7 Q. So one person taking 180 pills a month, right?

8 A. Yes.

9 Q. So is that your explanation, that you had a number
16:41:35 10 of patients within your Trumbull County stores who were
11 getting dispensed that kind of quantity to make up 26
12 million pills?

13 A. Some were.

14 Some were taking a hundred a month, some
16:41:47 15 would take 40 a month; some would take, you know, 50 a
16 month, whatever the case might be.

17 I can tell you that every prescription that
18 we filled, I took a lot of pride in who I hired in my
19 pharmacies and they took a lot of pride in their
16:42:03 20 technicians.

21 I think we did a good job screening
22 prescriptions.

23 Q. So --

24 A. We sent many people out the front door with a piece
16:42:12 25 of paper in their hand --

1 Q. So --

2 A. -- on a prescription.

3 Q. -- if you had been provided with this data while
4 you were working as the district manager, these kinds of
16:42:23 5 numbers would not have concerned you.

6 Is that your testimony?

7 A. Yeah, they concern me, but, you know, if they're
8 evaluating every prescription on its own merit, they did
9 a good job screening through folks that came in that were
16:42:40 10 pill-seekers.

11 We didn't have lines of people in our
12 stores.

13 Q. Would you have been concerned that there was
14 over-dispensing?

16:42:48 15 A. Would I be concerned if there was over-dispensing?

16 Q. No, would you have been concerned, seeing those
17 numbers, that there was over-dispensing out of your
18 stores?

19 A. No.

16:42:56 20 We had good employees. They did a nice
21 job. We had, I think, pharmacists by nature are fairly
22 conservative on the most part. Those are the kind of
23 folks that I went to pharmacy school with, and these are
24 the folks that I interacted with professionally.

16:43:09 25 Pharmacists do a nice job.

1 My pharmacists did a great job, I think.

2 Q. Would you have been concerned about whether the
3 pharmacists had time to investigate these scripts?

16:43:23

4 A. A good pharmacist takes the time needed to
5 investigate any prescription.

6 Q. Would you agree, sir --

7 A. Pharmacists take it personally when a bad script
8 gets past them, so there's a lot of pride in pharmacy on
9 what they do.

16:43:35

10 Q. Would you agree, Mr. Joyce, that an oversupply of
11 opioid pills in a community can lead to diversion?

12 A. Sure.

13 Q. And --

14 A. I don't think we're a part of it.

16:43:46

15 Q. And would you agree that diversion can lead to an
16 unreasonable interference with the public health and
17 safety?

18 A. Without question.

19 MR. STOFFELMAYR: Objection to form, Your
20 Honor.

16:43:56

21 THE COURT: Overruled.

22 A. Without question.

23 BY MR. WEINBERGER:

24 Q. Did you know that Walgreens had data, dispensing
25 data, from your stores and others where they could create

16:44:09

1 reports and trends about prescriber prescribing habits
2 and profiles?

3 A. Honestly, Mr. Weinberger, maybe I'm an old-time
4 pharmacist.

16:44:24 5 I don't know.

6 Q. Were you --

7 A. We evaluated every prescription that came into our
8 stores for both legality and being ethical to dispense.

9 So there was a problem in Trumbull County?

16:44:39 10 There was a problem in every county in Ohio.

11 Do I think Walgreens was a part of that
12 problem? No.

13 Q. Sir, did you ever use the PDMP OARRS yourself?

14 A. I tried to log in and get in, look at it, sure.

16:44:57 15 Q. How many occasions?

16 A. Dozens.

17 Q. Um-hmm. And you understand that that's a
18 data-driven resource?

19 A. Sure.

16:45:05 20 Q. And you understand that the data that goes into the
21 OARRS PDMP come from Walgreens as well as the other
22 retail pharmacy chains in Ohio?

23 A. I think we've talked about that, yeah.

24 Q. And do you realize that OARRS can analyze that data
16:45:25 25 and provide information regarding prescribing habits of

1 doctors?

2 A. And we looked at that all the time.

3 My pharmacists used OARRS every time they
4 were required to.

16:45:36 5 Q. But before the PDMP went into effect in 2011, there
6 was no way for a pharmacist at your stores to look at the
7 prescribing profile of a particular doctor because they
8 didn't have the data, did they?

9 A. You can judge a doctor's profile by the
16:45:58 10 prescriptions that they see coming into your store.

11 I mean, that's -- that's the old-fashioned
12 way, but that's the way it was done before the PMP.

13 Prior to OARRS, pharmacists had to make
14 their own judgment calls. OARRS helped you make that
16:46:13 15 judgment call. But in the '80s, '90s and early 2000s,
16 you know, plenty of folks walked in and were either
17 evaluated and filled, or handed a prescription back and
18 told to hit the road.

19 Q. How many -- do you have any idea, sir, how many
16:46:29 20 physicians' prescriptions are filled in your Walgreens
21 stores in Trumbull County?

22 A. With the prescription number? No.

23 Q. Do you have -- do you have how many -- do you have
24 any idea how many discreet physicians have prescriptions
16:46:49 25 that are filled by patients at your stores?

1 A. Did you say discreet physicians?

2 Q. Yes.

3 A. What's a discreet physician?

4 Q. Do you have any idea, sir, as to how many

16:47:05 5 individual physicians have their prescriptions -- have

6 their patients' prescriptions filled at your stores?

7 A. Like they direct them to our stores?

8 Q. Yes.

9 A. None that I know of.

16:47:18 10 Q. No.

11 There are probably -- I'm sorry, I'm not
12 making myself clear.

13 Let me see if I can get -- get a little
14 clearer for you.

16:47:27 15 Aren't there literally thousands of
16 physicians who write prescriptions that end up getting
17 filled at your stores?

18 A. Sure.

19 Q. You can't expect your pharmacist to know the
16:47:41 20 prescribing habits of every one of those physicians, can
21 you?

22 A. I have a pretty good idea if they're in your -- if
23 they're in your neighborhood, their prescribing habits.

24 Q. Well, isn't that the -- wasn't that the whole
16:47:53 25 purpose of OARRS being established in Ohio, to provide

1 information and data and data analysis to pharmacists so
2 they could evaluate the prescribing habits of doctors?

3 A. Sure.

4 MR. STOFFELMAYR: Your Honor, I'm going to
16:48:10 5 object.

6 There's some confusion about what OARRS
7 does and doesn't do here.

8 We can go to side-bar, but these questions
9 are --

16:48:18 10 THE COURT: Well, the witness can testify
11 to what his understanding is.

12 MR. STOFFELMAYR: I think we're getting
13 into a distinction between prescribers and patients, is
14 where the confusion comes in.

16:48:27 15 THE COURT: Mr. Weinberger, please clarify
16 your question, and then the witness can testify to his
17 understanding.

18 BY MR. WEINBERGER:

19 Q. Do you know how OARRS works?

16:48:34 20 A. I'm sorry?

21 Q. Do you know how OARRS works?

22 A. Sure.

23 Q. And what is the -- doesn't OARRS provide an
24 analysis of a prescriber's prescribing habits and
16:48:47 25 profile?

1 A. It gives you data on -- I don't think it gives
2 prescriber-specific information.

3 It gives data on the prescription history
4 of a patient that you're looking up as far as where
16:49:05 5 they've been, like you can see if they've been at Walmart
6 last week and CVS the week before and an independent
7 pharmacy yesterday, and those sorts of things.

8 Q. Well, can you agree that -- do you agree that OARRS
9 is a helpful tool --

16:49:19 10 A. OARRS is a helpful tool.

11 Q. Let me finish my question, sir.

12 A. Sure.

13 Q. It's a helpful tool to Walgreens' pharmacists who
14 are looking at prescriptions and trying to evaluate red
16:49:31 15 flags?

16 A. A tool, correct.

17 Q. Right. And do you believe it is a helpful tool to
18 preventing diversion?

19 A. Sure, it is.

16:49:37 20 Q. And do you understand that OARRS actually went into
21 existence for purposes of use by pharmacists in 2011?

22 A. Sounds about right.

23 Q. And before 2011, that tool didn't exist, did it?

24 A. It existed for law enforcement, I think, for a few
16:49:59 25 years prior to pharmacists getting on it.

1 Q. For pharmacists it didn't exist as a tool, did it?

2 A. Oh, it existed.

3 We didn't have access to it.

4 Q. Right.

16:50:08 5 You couldn't -- pharmacists before 2011
6 could not use OARRS, correct?

7 A. Correct.

8 Q. So do you understand that in 2011, the regulations
9 of the Ohio Board of Pharmacy required pharmacists to
16:50:50 10 check OARRS under certain circumstances?

11 A. Sure.

12 Q. And that was a change in the regulation, correct,
13 in 2011?

14 A. I believe so, yeah.

16:51:00 15 Q. So let's take a look together at P 20810.

16 A. Am I getting a new packet, or is that in here?

17 Q. We're getting it for you, sir.

18 A. Thank you.

19 Q. All right. Let's go to P -- apparently we don't
16:52:02 20 have enough to provide to everybody, so let's take a look
21 at P 20811.

22 A. Could I have a copy?

23 Q. We're going to get you one.

24 A. Thanks.

16:52:25 25 Thank you, ma'am.

1 Q. So this is an e-mail that you sent to a number of
2 other Walgreen employees, correct?

3 A. Yes, sir.

4 Q. And this e-mail was sent by you on August 11th,
16:52:48 5 2011, right?

6 A. Sure. Yes.

7 Q. And it was sent to Al Carter, right?

8 A. Yep.

9 Q. And who is Al Carter? What is Al Carter's
16:52:59 10 position?

11 A. I think he worked in Government Affairs.

12 Q. Okay. And Deborah Platts, who is she?

13 A. She was kind of the supervisor of the pharmacy
14 supervisors.

16:53:10 15 Q. And Tim Anhorn?

16 A. Regional Vice President for Market 29 out of New
17 Jersey.

18 Q. And Natasha Ramlagan?

19 A. Ramlagan, she worked underneath Debbie Platts and
16:53:25 20 above my level.

21 Q. And Nick Barsan?

22 A. He was a pharmacy supervisor in Cincinnati.

23 Q. And Patrick Hawthorne?

24 A. Maybe a Vice -- a corporate Vice President. I

16:53:37 25 don't know his exact role at that time, but I think maybe

1 a corporate Vice President.

2 Q. Okay. So this e-mail is about the fact that
3 4729.5-20, which is a regulation of the Ohio Board of
4 Pharmacy, was going to change and create certain
16:54:00 5 circumstances that made checking OARRS by pharmacists
6 mandatory.

7 Correct?

8 A. Correct.

9 Q. So this new language said that, "Prior to
16:54:15 10 dispensing a controlled drug prescription, at a minimum,
11 a pharmacist shall request and review an OARRS report
12 covering at least one-year time period and/or another
13 status report, where applicable --"

14 THE COURT: Another state's report, I
16:54:36 15 believe.

16 BY MR. WEINBERGER:

17 Q. -- "another state's report where applicable and
18 available, if a pharmacist becomes aware of a person
19 receiving reported drugs from multiple prescribers."

16:54:46 20 Let me stop you there.

21 That's a red flag, isn't it?

22 A. That's a red flag or a concern, whatever you want
23 to call it.

24 Q. Well, you would call it a concern.

16:54:55 25 A. I'll call it a concern.

1 Q. Right. You wouldn't call it a red flag, right?

2 A. Not unless you want me to.

3 Q. I don't want you to do anything that you're not
4 comfortable with, sir.

16:55:04 5 A. It's a concern.

6 Q. I want you to do what you would normally do and how
7 you would normally use that phrase or not --

8 A. A patient --

9 Q. -- back at the time you were working for Walgreens.

16:55:16 10 A. A patient going to multiple prescribers is a
11 concern, for sure.

12 Q. Okay. Receiving reported drugs for more than 12
13 weeks, is that a red flag?

14 A. No. That's -- that's a concern. I mean, lots of
16:55:28 15 people are on pain pills longer than 12 weeks.

16 Q. Okay.

17 A. So I think the multiple prescribers was way more
18 important than reported drugs for more than 12 weeks.

19 Q. "Abusing or misusing reported drugs,
16:55:44 20 overutilization, early refills, or appears overly sedated
21 or intoxicated upon presenting a prescription for a
22 reported drug."

23 Is that a red flag?

24 A. Sure. It's a concern that you want to look into
16:55:56 25 before you would fill that prescription.

1 Q. "Requesting a reported drug by specific name,
2 street name, color or identifying marks."

3 Is that a red flag?

4 A. Definitely needs looked into. It's a concern,
16:56:10 5 sure.

6 Q. "Requesting the dispensing of reported drugs from
7 a prescription issued from -- issued from a prescriber
8 with whom the pharmacist is not familiar (located out of
9 state or prescriber is outside the usual pharmacy
16:56:30 10 geographic prescriber care area)."

11 Is that a red flag?

12 A. So again, that would be a low-level concern.

13 We had lots of folks that travel to the
14 Cleveland Clinic, or UPMC in Pittsburgh, or Akron
16:56:46 15 Children's Hospital, or Sloan Kettering Cancer Center in
16 New York, or Johns Hopkins in Baltimore.

17 So that was not -- that was a concern. It
18 needed looking into, but that was not unusual.

19 Q. And number six, "Presenting a prescription for
16:57:02 20 reported drugs when the patient resides outside the usual
21 pharmacy geographic patient population." Red flag?

22 A. Again -- again, it's a concern because, you know,
23 if you'd investigate and find that this is Mrs. Jones's
24 sister who is staying with her for three months to help
16:57:23 25 her convalesce, that wouldn't be a concern at all.

1 But it's something that you need to look
2 into.

3 Q. So you understand that the regulation was being
4 changed to require the pharmacist to check OARRS if any
16:57:40 5 of these circumstances -- you call areas of concern, some
6 people call them red flags, if any of those existed, it
7 required -- it would require the pharmacist to check
8 OARRS, correct?

9 A. Yes.

16:57:57 10 Q. Now, OARRS -- by the way, these concerns, as you
11 talk about them, these six concerns, are these all red
12 flags well-known to pharmacists?

13 A. You would do that normally whether you had OARRS or
14 you didn't have OARRS.

16:58:24 15 Q. That's my question.

16 Are they red flags well-known to most
17 pharmacists?

18 A. Any good pharmacist, yeah.

19 Q. Um-hmm. Now, the data that's in OARRS, if someone
16:58:38 20 were to check into it, could reveal doctor-shopping,
21 couldn't it?

22 A. It could.

23 Q. It could reveal pharmacy-shopping, right?

24 A. It could.

16:58:49 25 Q. It could reveal payments by cash, right?

1 A. I don't know if that would show payments by cash.

2 I'm not sure if OARRS had that capability.

3 Q. It could reveal pattern prescribing by doctors,
4 right?

16:59:09 5 MR. STOFFELMAYR: Objection, Your Honor.

6 THE COURT: Overruled.

7 A. It could -- ask me that again, Mr. Weinberger.

8 Q. It could reveal pattern prescribing by doctors.

9 True?

16:59:20 10 A. The pattern typically was the pattern of the
11 patient.

12 In other words, it would show you a history
13 of where they've been over a time frame, what stores
14 they've gotten controlled drugs filled at.

16:59:32 15 That's what it showed you.

16 Q. Um-hmm. So you're saying it doesn't do an analysis
17 of prescribers?

18 A. I don't think it did.

19 Q. Can it reveal improper early refills?

16:59:44 20 A. Oh, yeah, sure.

21 Q. Could it reveal excessive prescription dosing?

22 A. Sure.

23 Q. Could it reveal multiple short-term opioid
24 prescriptions?

16:59:55 25 A. That's -- yeah, that's what it did, sure.

1 Q. Could it reveal doctors who are prescribing outside
2 their area of specialty?

3 A. I don't think it had that capability.

4 In other words, I don't think it would

17:00:11 5 show -- I don't think it would show, like, the specialty
6 of the doctor, no.

7 I don't think it had that capability.

8 Q. Well, Mr. Joyce, when is the last time you actually
9 opened up the OARRS program and looked at it?

17:00:25 10 A. Probably a year ago.

11 Q. And when you did that a year ago, when was the last
12 time before that?

13 A. I didn't look at it all the time.

14 Q. Well, you -- I'm getting the feeling that you
17:00:39 15 seldom looked at it.

16 Is that true?

17 A. I looked at it when I needed to look at it at work
18 or if the pharmacist wanted to show me something about a
19 patient.

17:00:46 20 I didn't use it. I wasn't a practicing
21 pharmacist.

22 Q. So you didn't look at it very often, did you?

23 A. I looked at it when I needed to.

24 Not real often, no.

17:00:55 25 Q. Not often, right?

1 A. Not real often.

2 Q. Um-hmm. Now, is doctor-shopping a red flag, sir?

3 A. It's definitely a red flag or a concern, sure.

4 Q. Is pharmacy-shopping a red flag?

17:01:09 5 A. Without question.

6 Q. Is payment by cash a red flag?

7 A. Usually.

8 Q. Is pattern prescribing by a doctor a red flag?

9 A. If you see a doctor writing the same thing over and
17:01:26 10 over to every patient, that's a red flag.

11 Q. Is improper early refills a red flag?

12 A. Usually.

13 Not always, but usually.

14 Q. Is --

17:01:39 15 A. If someone went to an emergency room and got a
16 three-day supply or whatever, four-day supply, and they
17 went to their family doctor on two days later and got a
18 30-day supply, that would be an early refill, but that
19 wouldn't really be a concern.

17:01:53 20 Q. Yeah, but the question is, is that a concern or red
21 flag that needs to be further investigated and resolved?

22 A. You'd look into those things, sure.

23 Q. Sure. So we're talking about red flags that may
24 arise or trigger further investigation, right?

17:02:08 25 A. Yes.

1 Q. And the prescription should not be filled unless
2 the red flag is resolved, right?

3 A. Sure.

4 Q. Is excessive prescription dosing a red flag?

17:02:22 5 A. Sure.

6 Q. Is multiple short-term opioid prescriptions a red
7 flag?

8 A. It could be.

9 Again, I gave the example of an emergency
17:02:38 10 room and then going to the family doctor.

11 Q. Right.

12 A. You know, could be very innocuous or could be a
13 concern.

14 Q. Right. So it's a red flag that needs to be
17:02:49 15 investigated and resolved before the prescription is
16 filled, right?

17 A. Sure. Yeah.

18 Q. If the pharmacist is exercising their corresponding
19 responsibility.

17:02:59 20 True?

21 A. Sure.

22 Q. And are doctors who are prescribing outside
23 their -- opioids outside their area of specialty, is that
24 a red flag?

17:03:10 25 A. Yeah. I mean, if they have a diagnosis code on

1 there, I mean, that really wasn't a big -- I don't think
2 that was a huge issue.

3 When I think of doctors prescribing outside
4 their specialty, I think of, like, a dentist writing for
17:03:27 5 a birth control pill, or something like that.

6 Any doctor can write for a controlled drug
7 if they have the proper licensing, so specialists wrote
8 for controlled drugs, general practitioners wrote for
9 controlled drugs, dentists wrote for controlled drugs,
17:03:46 10 internal medicine wrote for controlled drugs, ER doctors,
11 and so forth.

12 Q. So we're going to get into this tomorrow, but
13 you're familiar with the targeted drug good-faith
14 dispensing policy of Walgreens?

17:04:00 15 A. Sure.

16 Q. And are you familiar with the fact that one of the
17 issues that a pharmacist exercising corresponding
18 responsibility has to investigate is what the specialty
19 of the patient -- of the doctor is and --

17:04:20 20 A. He --

21 Q. -- and whether or not the prescription of an opioid
22 is outside that area of practice?

23 A. Well, if you look on the prescription head --

24 Q. Sir, it's a simple question.

17:04:32 25 Is that a part of the targeted drug

1 good-faith dispensing policies of Walgreens?

2 A. Yes. It's on the prescription header.

3 Q. Okay. Now, in 2011, going back to this Exhibit
4 20811, you were on the Ohio Board of Pharmacy, right?

17:04:52 5 A. I was.

6 Q. And actually, you were writing this e-mail to these
7 department -- these Walgreen department heads and other
8 Walgreens employees to indicate that you objected before
9 the Board of Pharmacy, yourself and together with a CVS
17:05:23 10 Board member, to the Ohio Board changing this rule,
11 making --

12 MR. DELINSKY: Objection.

13 Hearsay, Your Honor.

14 THE COURT: Sustained.

17:05:38 15 BY MR. WEINBERGER:

16 Q. Well, you -- you're communicating that you objected
17 to this change in the Ohio Board of Pharmacy regulation
18 to make mandatory checking of OARRS applicable under
19 certain circumstances.

17:05:54 20 Right?

21 A. I didn't think this was ready for prime time the
22 way they rolled it out.

23 Q. So you objected to it, right?

24 A. Sure.

17:06:00 25 Q. Right. And there are a number of reasons that you

1 communicate in this e-mail as to why you objected.

2 Right?

3 A. Sure.

4 Q. So let's look at that.

17:06:10 5 By the way, which hat were you wearing when
6 you wrote this e-mail?

7 Were you wearing the Walgreens hat or the
8 Ohio Board of Pharmacy hat?

9 A. I think I was wearing the Ohio Board of Pharmacy
17:06:23 10 hat.

11 Q. Okay. But you're communicating to your colleagues
12 at Walgreens that on behalf of the Ohio Board of Pharmacy
13 or on behalf of Walgreens, you objected to the change in
14 this rule?

17:06:38 15 A. I'm not sure what you mean.

16 I was giving Walgreens information on how
17 those rules were going to change. There's nothing
18 nefarious about this information that I was sending to
19 Walgreens' leadership.

17:06:50 20 Q. Well, you're communicating to your Walgreens
21 colleagues that at the Board meeting, associated with
22 consideration of this amendment making OARRS mandatory
23 for pharmacists, that you objected to it, right?

24 A. I objected to it in its present form.

17:07:08 25 I thought they should do some -- do their

1 due diligence, and that's my duty as a Board member. If
2 I don't think this is going to benefit at, in this
3 version, the people of the State of Ohio, sure, I
4 objected.

17:07:22 5 Q. So you knew at the time, as you've apparently
6 always known, that a pharmacist has an independent
7 corresponding responsibility with respect to dispensing
8 opioids, right?

9 A. I think I've said that a dozen times today.

17:07:35 10 Q. All right. So your objections were, the doctors
11 are required to do this also, so why should -- so why do
12 both professions have to do it.

13 What you were communicating there, sir,
14 was, "Well, if doctors have to check OARRS, why should
17:07:56 15 the pharmacists," right?

16 A. I wondered why we both had to do it. Maybe the
17 pharmacists should just be the ones. Maybe the doctors
18 should just be the ones.

19 I wasn't sure we both needed to do it.

17:08:07 20 Q. Well, diversion of opioids is very dangerous to the
21 health and safety of our communities, right?

22 A. Without question.

23 Q. And diversion is dangerous to individuals, right?

24 A. It's terrible.

17:08:23 25 Q. And so having a double-check in the system as to

1 whether or not a prescription is valid or not, you're
2 saying is a bad idea?

3 A. I was questioning whether it was necessary.

4 Q. Right. And you go on to say, "This will take
17:08:39 5 valuable patient care time away from the pharmacist."

6 A. And I was right about that, because when it rolled
7 out, it was very clunky, took minutes to bring up
8 information for the pharmacist, and it did take valuable
9 time away from the pharmacist.

17:08:56 10 The most important thing a pharmacist can
11 do is spend a minute talking with the customer.

12 Q. Right. At the time in 2011, didn't Walgreens have,
13 as one of its policies, a 15-minute -- 15-minute time
14 limit on filling prescriptions?

17:09:12 15 A. I don't believe so.

16 Q. All right. We'll get into that tomorrow.

17 A. Good.

18 Q. You thought this was going to take valuable patient
19 care time away from the pharmacist, true?

17:09:23 20 A. And it did.

21 Q. And you go on to say, "The information is already
22 in the OARRS report with law enforcement access."

23 Have I read that correctly?

24 A. You did.

17:09:33 25 Q. "No need for us to play policeman."

1 That's what you said, right?

2 A. That's what I typed.

3 Q. So when you're faced under this regulation with one
4 of these six flags that under this regulation makes
17:09:55 5 mandatory checking OARRS, is there somebody from law
6 enforcement there or available to check OARRS for that
7 particular script?

8 A. I don't believe so.

9 My concern, like I said, is that this
17:10:14 10 system wasn't ready for prime time, and the Board should
11 have done a little more work on it before they roll it
12 out.

13 For instance, when I was on the Board, the
14 Board rolled out a one-transfer policy for controlled
17:10:29 15 drugs. Sounds like a great idea, but folks would go from
16 Ohio to Florida for a couple months in the winter,
17 transfer their prescription down there, and then when
18 they came back they couldn't transfer it back.

19 I objected to that. Sounds like it's a
17:10:50 20 great idea, though, right? You're limiting transfers of
21 controls. And again, they did repeal that down the line.

22 MR. WEINBERGER: Your Honor, move to strike
23 the answer as not responsive.

24 THE COURT: Well, overruled.

17:11:01 25 BY MR. WEINBERGER:

1 Q. Sir, in objecting to this change in the regulation,
2 on behalf of Walgreens, you were putting profits over
3 safety, weren't you?

4 A. No.

17:11:15 5 MR. STOFFELMAYR: Objection, Your Honor.
6 It's argument.

7 He wasn't objecting on behalf of Walgreens.

8 THE COURT: Well, overruled.

9 BY MR. WEINBERGER:

17:11:22 10 Q. Your answer, you weren't?

11 A. Ask me again.

12 Q. Sure.

13 On behalf of Walgreens, while you were a
14 member of the Board objecting to this change in the
17:11:31 15 regulation making OARRS mandatory, you were putting
16 Walgreens' profits over safety, weren't you?

17 A. I was not, and --

18 Q. Sir.

19 A. Let me answer the question.

17:11:43 20 Q. Sir.

21 A. Let me answer the question.

22 MR. STOFFELMAYR: Objection.

23 THE COURT: Overruled.

24 Let him answer the question.

17:11:49 25 BY MR. WEINBERGER:

1 Q. Okay.

2 A. This version of OARRS was edited down the road, so
3 my -- some of my objections were certainly valid.

4 Q. Sir, Item 6 of your e-mail, one of your objections
17:12:03 5 is that this was just another unfunded mandate imposed on
6 retailers.

7 You wrote that, right?

8 A. I did wrote -- I did write that, and what I was
9 referring to is we didn't know, number one, if the
17:12:21 10 interface between all of the pharmacies in the State of
11 Ohio could interface with the State Board website.

12 And as it turned out, that was correct,
13 some of them couldn't interface with the individual
14 companies' websites or it was very, very clunky.

17:12:37 15 I didn't know if every little mom and pop
16 store in Chillicothe, Ohio, had the capability to do this
17 or even had the money to do this.

18 So I thought we should do a little more
19 work before we roll out this -- this perfect program that
17:12:53 20 the State Board had.

21 Q. Sir, are you familiar with a study that Walgreens
22 did on the cost of checking OARRS across -- or PDMPs
23 across this nation?

24 A. No.

17:13:11 25 Q. So you're not aware of a study that indicated that

1 it would cost between 15 and \$80 million across the
2 country for Walgreens to have their pharmacists check
3 PDMPs?

4 A. That's what I said.

17:13:30 5 MR. WEINBERGER: Your Honor, do you want me
6 to keep going or is this a good --

7 THE COURT: Well, I was going to inquire,
8 if it's a convenient place to stop.

9 MR. WEINBERGER: It is.

17:13:38 10 THE COURT: I didn't want to break you off
11 in midstream.

12 Okay. All right. Ladies and gentlemen, we
13 will break for the evening.

14 Usual admonitions. Don't read, watch,
17:13:48 15 listen to anything remotely connected to this case.
16 Don't discuss the case with everyone -- anyone. Just
17 tell them that this Judge has ordered me not to talk
18 about it until the case is over.

19 And we'll pick up with this witness's
17:14:03 20 testimony tomorrow.

21 Have a great evening.

22 (Jury out.)

23 THE COURT: Okay. Everyone can be seated
24 for a minute. I wanted to make sure the doors -- sir,
17:14:40 25 you can step down. You're excused for the evening. I

1 have some legal issues.

2 MS. SULLIVAN: Your Honor, can I put
3 something on the record? Mr. Weinberger has a note about
4 Giant Eagle that the jury was looking at when the jury
17:14:53 5 was walking out.

6 THE COURT: I don't know what you're
7 referring to.

8 MS. SULLIVAN: It's on the monitor, Your
9 Honor. It's been on the monitor. He took it off. I'm
17:15:03 10 hoping it was inadvertent.

11 THE COURT: I just saw it at the last
12 second. All right. Everyone should be careful about
13 those notes.

14 All right. Did the plaintiffs make a
17:15:19 15 decision on what they're doing with Nelson?

16 MR. LANIER: Yes, Your Honor.

17 Yes, Your Honor. Mark Lanier for
18 plaintiffs.

19 We decided that we would put Nelson on live
17:15:29 20 at a time next week that is convenient. And I
21 expressed -- when I expressed that to Tara, she said that
22 perhaps we should make one more stab at finding some
23 agreeable modifications to the notes.

24 I'm fine doing that as well.

17:15:44 25 THE COURT: All right.

1 MR. LANIER: So we'll try and do that
2 tonight and let the Court know first thing in the
3 morning.

4 THE COURT: All right. I think that's, if
17:15:51 5 you can --

6 MR. LANIER: It's easier.

7 THE COURT: Well, it's easier and that's
8 how everyone planned it.

9 MR. LANIER: Yes.

17:15:57 10 THE COURT: So if you can do it, that's
11 great.

12 MR. LANIER: We'll try in good faith, Your
13 Honor.

14 THE COURT: All right. That's fine.

17:16:02 15 MR. LANIER: And, Your Honor, we'll alert
16 Special Master David Cohen in agreement with that.

17 THE COURT: All right. Now we have two
18 completed witnesses with exhibits.

19 We have Mr. Catizone and Mr. Rannazzisi.

17:16:19 20 So I don't want to get too far behind, so
21 certainly by the beginning of tomorrow I'd like to have a
22 list of what each side's offering and if there are any
23 objections, and I strongly suggest keep the objections to
24 a minimum.

17:16:36 25 Tomorrow we're going to end a little

1 earlier because I need to make a condolence call, so
2 we'll go to 5:00, maybe a touch before 5:00. Right
3 around 5:00 o'clock will be fine.

4 Okay. Anything else anyone needs to bring
17:16:52 5 up?

6 Mr. Delinsky, yes.

7 MR. DELINSKY: Your Honor, just very
8 briefly, on the OARRS questions, what is available in
9 OARRS is demonstrable facts, and there is no prescriber
17:17:06 10 analysis on OARRS.

11 What the pharmacist can see is a patient
12 profile. And I'm not suggesting anything was intentional
13 from counsel, but some of the questions were misleading
14 insofar as they suggested that a pharmacist could see
17:17:22 15 information about the prescriber on OARRS.

16 It's just not available as a factual
17 matter.

18 THE COURT: Well, Mr. Delinsky, I may be
19 the only person in this room who hasn't looked at OARRS
17:17:34 20 to see what's there.

21 MR. DELINSKY: We're not allowed to as a
22 matter of law.

23 THE COURT: Well, I'm not allowed to. I'm
24 not in that profession.

17:17:42 25 I figured the lawyers might have as part of

1 preparing witnesses, so I guess we'll have to clear it up
2 with other witnesses or, you know, this was his
3 understanding.

4 I mean, again, he said he doesn't consult
17:17:58 5 it regularly because he's not a practicing pharmacist.

6 MR. STOFFELMAYR: My concern or the reason
7 I objected, and I can't speak for Mr. Delinsky, is if you
8 ask a leading question with a demonstrably false premise,
9 that is unfair to the witness.

17:18:14 10 THE COURT: Well, counsel, I'm assuming
11 Mr. Weinberger was not doing that, okay? Everyone knows
12 a lawyer is not supposed to do that.

13 You're not supposed to deliberately lead a
14 witness to something that's factually incorrect, so --

17:18:29 15 MR. STOFFELMAYR: I assume it was
16 unintentional, which is the reason for objecting.

17 THE COURT: All right. Well, maybe I
18 didn't perceive the basis for the objection, but, you
19 know, I want everyone to be conscious of what -- of not
17:18:45 20 doing that. And if you can't get that from OARRS, you
21 shouldn't suggest to the witness that you can.

22 All right. Then we'll see everyone
23 tomorrow morning.

24 (Proceedings concluded at 5:19 p.m.)

17:19:00 25

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Susan Trischan

/S/ Susan Trischan, Official Court Reporter
Certified Realtime Reporter

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